United States Court of Appeals

for the Second Circuit

APPENDIX

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74-2141

United States Court of Appeals
FOR THE SECOND CIRCUIT

D-Z INVESTMENT COMPANY,

Plaintiff-Appellee,

against

ROBERT E. HOLLOWAY, MELVIN S. TAUB, MAURICE J. BRICK, PETER E. SIMON, NORMAN BRASSLER, CHARLES GILLER, HERBERT E. HARPER, DR. GORDON McKINLEY, JAMES R. MOSELEY, III, JACK G. TAYLOR and DALLAS S. TOWNSEND, JR.,

Defendants-Appellants,

NJB PRIME INVESTORS,

Defendant,

and

SECURITY MANAGEMENT CO., INC., CANTOR, FITZGERALD & CO., INC., BRUCE R. DAVIS, JEROME ZIMMERMAN, RALPH M. BECKER, SAUL BECKER, BERNARD KROLL, MAX SOPHER, HAROLD LEVOW, HAROLD B. LEVIN, HARVEY JACOBSON, SEYMOUR WEINBERG and RONALD D. FEINMAN,

Additional Defendants to Counterclaims.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

Volume II

Pages A513 to A1296

UNITED STATES COURT OF APPEALS
FILED
SEP 16 1974
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SECOND CIRCUIT

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EXCERPTS FROM DEPOSITION OF LAWRENCE F. ORBE, III

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

D-Z INVESTMENT COMPANY,

Plaintiff,

-against-

ROBERT E. HOLLOWAY, MELVIN S. TAUB, MAURICE J. BRICK, PETER E. SIMON, NORMAN BRASSLER, CHARLES GILLER, HERBERT E. HARPER, DR. GORDON MCKINLEY, JAMES R. MOSELEY, III, JACK G. TAYLOR, DALLAS S. TOWNSEND, JR., and NJB PRIME INVESTORS,

Defendants,

-and-

SECURITY MANAGEMENT CO., INC., CANTOR, FITZGERALD & CO., INC., BRUCE R. DAVIS, JEROME ZIMMERMAN, RALPH M. BECKER, SAUL BECKER, BERNARD KROLL, MAX SOPHIER, HAROLD LEVOW, HAROLD B. LEVIN, HARVEY JACOBSON, and SEYMOUR WEINBERG,

Additional Defendants to Counterclaims

DEPOSITION of LAWRENCE F. ORBE, III, taken pursuant to Notice, held at the offices of Wachtell, Lipton, Rosen & Katz, Esqs., 299 Park Avenue, New York, New York, on the 16th day of July, 1974, at 3:35 p.m., before Irwin H. Benjamin, a Notary Public of the State of New York.

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0 0 0

L A W R E N C E F. O R B E, I I I, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. WACHTELL:

Q Would you state your full name and present home address?

A Lawrence F. Orbe, III, 15 West 72nd.

* * *

Q Now, Mr. Orbe, would you state by whom you are employed?

A Cantor, Fitzgerald & Company, Inc., 1345 Avenue of the Americas.

Q How long have you been employed by Cantor, Fitzgerald?

A Approximately two years.

Q Would you describe the nature of the business of Cantor, Fitzgerald?

A Cantor, Fitzgerald is an investment banking firm, which conducts a general brokerage business.

Q Is it a member of any Exchange?

A No, it is not.

Q Is it a member of the NASD?

A Yes.

Q What is your position with Cantor, Fitzgerald?

A I believe a vice president.

Q Briefly describe the nature of your duties and responsibilities.

A I am the officer in charge of the New York Corporate Finance Department; which department handles corporate clients, as opposed to individuals.

Q Is that the sole function of the New York Office or does the New York Office as distinct from your responsibility do other things as well?

A Yes, the New York Office does do other things.

Q Those are beyond the scope of your responsibilities?

A That is correct.

Q Just briefly, would you describe what other functions are handled out of the New York Office?

A Trading in government securities, trading in corporate bonds, trading in the secondary money market, repos, certificates of deposit.

Q Where is the principal office of Cantor, Fitzgerald?

A 232 North Cannon Drive, Beverly Hills.

Q California, of course?

A Yes.

Q Would you briefly recount for me your ex-

perience and employment history prior to your coming with Cantor, Fitzgerald two years ago?

A For the five years prior to joining Cantor, Fitzgerald, I had my own partnership in the investment banking business.

Q And prior to that?

A Prior to that for some nine years, I was the partner in charge of the Corporate Finance Department at a firm then known as Glore, Forgan.

Q Are there other employees of Cantor, Fitzgerald who work under your supervision in the New York office?

A Not directly.

Q Who is Mr. Miller?

A Mr. Miller is a senior vice president of the firm.

Q What office does he work out of?

A New York.

Q And is he in charge of the New York office?

A No, he is not.

Q What is his function?

A Administration.

Q Anything else? Or does that pretty well describe it?

A I would say that a very, very sizeable portion of

his time is devoted to the administration of the affairs of Mr. Cantor personally, separate and distinct from the affairs of the firm.

Q What officer of Cantor, Fitzgerald is in charge of the New York office?

A George V. Delson.

Q What is his title?

A Executive vice president.

Q To whom do you report?

A Mr. Miller.

Q Do yuu know a man called Bruce Davis?

A Yes.

Q How long have you known Mr. Davis?

A Off the record for a minute. If I have a little calendar in front of me, it is going to help me. Just a plain little calendar, is that all right?

Q By all means.

A Read the question back.

(Record read.)

A Approximately six months.

Q I take it that takes us back to January of this year, is that correct?

A That is correct.

Q And would you tell me how you first met Mr.

Davis, and under what circumstances?

A I met Mr. Davis in New York in my office in connection with Mr. Davis' desires to expand the scope of the activities of his existing company, and basically, he was looking to me, my advice and assistance in connection with this expansion.

Q Was that existing company Security Management?

A Yes.

Q Are you aware how Mr. Davis came to you?

A He was introduced to the firm and directed to me by a mutual acquaintance of Mr. Davis and the firm.

Q Who is that?

A I don't recall.

Q Was that mutual acquaintance present at that meeting that you started to describe?

A No, he was not.

* * *

Excerpts from Deposition of Lawrence F. Orbe, III

10 * * *

Q To the best of your knowledge or information, was Mr. Davis in communication with anybody else in the firm before meeting with you?

MR. KILL: If you have any knowledge of prior contacts.

Q Or any information?

A My best recollection is that he met Mr. Miller and I approximately the same time. He might have met Mr. Miller a little bit earlier.

Q Was this mutual acquaintance to whom you referred, acquaintance of yours or an acquaintance of Mr. Miller's or someone else in the firm?

A I don't think --

MR. WILD: Objection to the form of the question.

MR. KILL: Objection. By definition, I think the answer mutual eliminates the subject in the question.

MR. WACHTELL: No. The witness previously --

MR. KILL: He said a mutual friend --

MR. WACHTELL: He said mutual acquaintance, and my question is, mutual on one side with Mr. Davis, and on the other side it was not clear from the previous answer whether the mutuality ran to Mr. Orbe or to perhaps Mr. Miller or perhaps to somebody else at the firm, and that is what I am seeking to ascertain, and he said he doesn't know, and --

Q Am I correct?

A Yes.

MR. KILL: I have no objection to you clarifying the record.

Q Now, at this first meeting, was anybody present other than yourself and Mr. Davis?

MR. KILL: Repeat the question.

(Record read.)

A Mr. Miller was present.

Q Anybody else?

A No.

Q Did you take notes of anything that transpired during the meeting?

A No, I did not.

Q Nothing at all?

A No.

Q Did Mr. Miller?

A No. Not that I know of.

Q Did you write any memorandum subsequent to the meeting of the subject matter thereof or any part thereof?

A No.

Q Did you open any file or any account or any internal reference with respect to Mr. Davis or Security in the files of Cantor, Fitzgerald?

MR. WILD: I am going to object to the form of the question. I seek clarification as to whether that is at any time or with reference to that initial meeting.

MR. WACHTELL: I am now asking at or about the time of that initial meeting or within a few days thereafter.

That is still the time focus and time frame of my questions.

MR. WILD: I have no objection.

A No, I didn't.

Q Did anybody else, to your knowledge or information?

A To my knowledge, no one else.

Q Would you tell me your best recollection of what was said at that meeting?

A Mr. Davis explained the operation of his company.

Q What did he say?

A My best recollection would be substance only. I can't remember his exact words.

Q To the extent that you do not recall exactly the words, I would like to have your best recollection of the substance of what he said.

A He described his company as having two basic components; one, apartment and management, and the other real estate development and joint venture with builder-developer. He described the scope of his activities to include the south, Atlanta, Florida.

He described his management. He gave us references, and gave us a preliminary discussions as to his views and methods of expanding, scope of activities of his

present operation.

Q Tell me to the best of your recollection what he said on that subject?

A He was interested in finding possible candidates to be merged or companies to be acquired in similar businesses.

Q Did he say anything else on that subject of his ideas of preliminary ideas of how to expand his activities?

A Not at that meeting.

Q Do you recall anything else that he said at that meeting?

A He invited me to Atlanta to see his operation, to see it and understand it, and to meet his people.

Q Did you or Mr. Miller at that meeting say anything on this subject of the ideas that Mr. Davis had put forward of how he was thinking of expanding his activities?

A Not really. We let him know that we would like to think about the whole subject matter for some time before we got back to him.

Q Did he indicate whether you thought that you could be of some assistance to him?

A We weren't really sure at that time.

Q Was there any discussion from him of what type of assistance he was looking for from you?

A At that early time, specifically he was looking for help in finding situations.

Q That is what he said?

A Yes.

Q And by that, you mean identifying a particular company or companies which would fit into this plan that he was expounding?

A Yes.

Q Were any specific company or companies mentioned at that first meeting?

A No.

Q Any ideas tossed out on the table of possibilities?

A No.

Q Any type of companies mentioned, category of companies?

A Only insofar as they might be in fields allied to the existing areas of activity of Security Management.

Q Was there any mention of PEITS?

A No.

Q Was there any discussion as to any compensa-

tion basis upon which Cantor, Fitzgerald would perhaps be willing to be of assistance to Mr. Davis, if it should determine that it was in a position to be of assistance and desired to do so?

A Not at that meeting.

Q Was there any discussion as to Mr. Davis' or his company's financial resources or where he thought he would seek financial resources to accomplish what he was talking about?

A Only to the extent that we requested financial statements so that we might review them.

Q Was anything said by him where he thought he could go for money if he needed money?

A No.

Q Was anything said by him on the subject of whether you would be in a position to play a role in raising financing for whatever project he should undertake?

A No.

Q Not at that meeting, is that correct?

A That is correct.

Q What happened next?

A I accepted Mr. Davis' invitation to visit his Atlanta operation. My best recollection would be about

the week of February 11.

Q And how long did you stay in Atlanta?

A Two days.

Q Did you meet with Mr. Davis there?

A Yes.

Q Did you meet with anybody else in connection with the purpose of your trip?

A Ralph Becker.

Q Anybody else?

A No.

Q And who was Ralph Becker?

A President of Security Management.

Q What did you do during those two days in connection with, as you have described it, trying to get a better picture of his operation?

May I ask this: Was Mr. Davis at the first meeting in essence asking whether -- let me rephrase that, I don't want to suggest an answer.

Was Mr. Davis at the first meeting asking whether Cantor, Fitzgerald would take Security on as an investment banking client?

MR. KILL: Before you answer, would you answer the phone, repeat the question.

(Record read.)

A That is a fair statement, and I will agree with that.

* * *

19 * * *

Q Did Mr. Davis in substance during the course of the first conversation indicate to you that he wished Cantor, Fitzgerald to take on Security as an investment banking client?

A Yes.

Q Now, would you briefly describe what you did in Atlanta with respect to Security or Mr. Davis or Mr. Becker in those two days?

A I analyzed their financial statements as presented to me; and data relating to the individual properties that they presently owned and managed; and their properties under construction or development, and I listened at great length to Mr. Becker describe to me how he ran the company.

Q Now, during the course of those two days, did you have any further discussion with either Mr. Davis or any discussion with Mr. Becker on this subject matter of Mr. Davis' ideas for expanding the activities of Security?

MR. WILD: I wasn't able to follow the whole question.

(Record read.)

MR. WILD: Thank you.

A Yes.

Q And who participated in such discussions?

A Myself and Davis, principally.

Q Was Mr. Becker present at any such discussions?

A In and out; basically.

Q And tell me now, did you make any notes of those discussions or any part thereof?

A I don't believe I did.

Q When you returned to New York, did you write any memorandum which incorporated any part of any such discussions?

A No.

Q Did you write any memorandum of your views or analysis of financials or the activities or other properties of Security that you had learned when you were down in Atlanta?

A No.

Q As of this point, there is still not a single scrap of paper to your knowledge generated by Cantor, Fitzgerald with respect to Security and Mr. Davis, is that correct; I don't mean today, I mean as of the point at which you come back to New York.

MR. KILL: I object. He is speaking for

himself, and not Cantor, Fitzgerald.

A Right.

Q You came back to New York, and a few days thereafter, to your best knowledge, there is not a single scrap of paper that has been generated in the Cantor, Fitzgerald files?

A That is correct.

Q Were any materials furnished to you that you brought back from Atlanta or were any materials, for that matter, left with you in New York by Mr. Davis during the course of the first discussion?

A The first discussion, no.

Q In the interim, did you receive anything?

A No.

Q Was anything given to you in Atlanta?

A Yes.

Q What?

A Financial statements of Security Management.

Q Anything else?

A Details with respect to the existing properties and the properties under development.

Q Anything else?

A Resumes of the principals.

Q Anything else?

* * *

Q Now, Mr. Orbe, would you tell me what you discussed with Mr. Davis in Atlanta with respect to his ideas for expanding the activities of Security?

A I gave him several ideas as to possible candidates or companies that he might look at, analyze, with a view to either merging with them or acquiring control of them.

Q Would you tell me what companies were discussed?

A I only remember two.

Q What were they?

A Data Lease Financial and Delta Corporation of America.

Q What else was discussed on that subject of his ideas for expanding the activities of Security?

A I gave him material on those two companies, asked him to review it, and suggested that he meet me in Florida, to visit them.

Q To visit the companies?

A Yes.

Q They were both Florida-based?

A Yes.

Q Was there any further discussion in Atlanta

Excerpts from Deposition of Lawrence F. Orbe, III

in the first place as to whether Cantor, Fitzgerald would be willing to take on Security as an investment planning client?

A No.

Q Was there any further discussion as to what financial compensation Cantor, Fitzgerald would be thinking about if it were willing?

A No.

* * *

Q Mr. Orbe, was there any further discussion at that time as to whether Security or Mr. Davis would come up with the financing for these proposed activities?

MR. MILD: Objection to the form of the question.

MR. KILL: I join in the objection.

Q Would you answer the question, please.

A No.

Q Was there any further discussion at that time as to whether Cantor, Fitzgerald would be asked to play any role in coming up with any such financing?

A No.

Q Do you recall anything else of the discussions at that time in Atlanta during the course of your visit?

A We made arrangements to go to Florida to retain Florida counsel, and I went back to New York.

Q What happened next with respect to any relationship or potential relationship between Cantor, Fitzgerald and Mr. Davis or Security?

A Repeat that question.

(Record read.)

A I met Davis in Florida.

Q When was that?

A Round February 22.

Q And what did you do?

A Attended the annual meeting of Data Lease Financial.

Q Did you participate in the annual meeting in any way either you or Mr. Davis?

A We asked questions.

Q Anything else?

A No.

Q What else did you do in Florida?

A We met with Florida counsel.

Q What else?

A We went back to Atlanta.

Q Who selected the Florida counsel that you met with?

A I recommended.

Q Now, in Florida, first, did you have any further discussions with Mr. Davis, first on the subject of whether Cantor, Fitzgerald was prepared to take on Security as an investment banking client?

A For this particular transaction, we were -- we

would have been the dealer-manager of a tender offer.

Q Are you talking about Data Lease now?

A Yes.

Q And was that contemplated to be a friendly tender offer or a hostile tender offer?

MR. KILL: I will object to the form.

MR. WACHTELL: On what ground?

MR. KILL: The characterization of friendly and hostile, I don't think this witness is qualified to answer.

Q Do you know the difference between a friendly tender offer and --

MR. KILL: Those -- as you know, Mr. Wachtell, those words have meanings in the state of law, which this witness is not competent to deal with in terms of a question, as a lay witness.

Q Do you know the difference between a friendly tender offer and a hostile tender offer?

A Yes, as a layman.

Q As a layman. I wasn't aware there was a legal definition. I always thought the difference was a lay difference. I am sure I can learn very much from you, but educate me some other time, will you?

Mr. Orbe, was it contemplated that the

tender offer for Data Lease would be a friendly one?

MR. KILL: I join --

A I don't know.

Q Did you have any discussions with Data Lease as to whether they would be receptive to a tender offer by Mr. Davis or Security?

A Yes.

Q Did you have any agreement with Security or Mr. Davis as to the financial basis upon which Cantor, Fitzgerald would be prepared to act as a broker-dealer on a tender offer for Data Lease?

A Financial arrangements between Security Management and Cantor, Fitzgerald?

Q Yes.

A For that transaction?

Q Yes.

A Yes.

Q Were these in writing?

A No.

Q What were they?

MR. WILD: I will object to the relevance of this question as being far beyond the scope of any of the issues that are framed in this lawsuit.

MR. KILL: I will join in that objection.

MR. WACHTELL: It seems to me the relevance is pretty clear. If you wanted me to state it, I will state it, but if you are not directing the witness not to answer, we will proceed, and your objection is noted.

Q What were the terms?

A As dealer-manager, we would charge sixty cents a share for those shares tendered, retaining 15 cents as management, and paying out the other 45 cents to soliciting brokers.

Q Now, while you were in Florida, did you have any further discussion with Mr. Davis on the subject of -- I will withdraw that.

Did you have any discussion with Mr. Davis while you were in Florida on the source of financing for a tender offer for Data Lease?

A Yes.

Q And what was that discussion?

MR. KILL: I will note for the record an objection on the ground of relevancy, if you accept that, we can expedite this entire --

MR. WACHTELL: I accept your objection, and note it for the record.

MR. WILD: And I join in that objection.

MR. WACHTELL: Okay.

Q What were those discussions, Mr. Orbe?

A I asked Mr. Davis if he had the resources to handle or pay for 400,000 shares at seven, and he assured me that he did.

Q Is that the totality of the discussion?

A Yes.

Q When you say "he," were you referring to Security?

A Bruce Davis.

Q Mr. Davis personally or Security?

A We didn't make a distinction.

Q You had previously reviewed the financial statement of Security, is that correct?

A Yes.

Q Did that financial statement indicate a cash resource of $2,800,000 for the purpose of making a tender offer?

MR. WILD: Objection to the form of the question.

MR. KILL: I join in the objection.

Q Would you answer the question?

A Between the financial statement of Security, and

the financial statement of Bruce Davis, I saw adquate assets to support that kind of investment on his part.

Q Did you see adequate cash as distinct from underlying assets?

A No.

Q Did you see adequate liquid assets?

A Partly.

Q Were the totality of the assets you saw cash, liquid assets, and assets upon which cash could be realized as for example by loan?

A Yes.

Q And did it take all three to come up with the requisite $2,800,000 as you read the financial statements?

A Yes.

MR. WILD: I object to the form of the question.

MR. KILL: I join in the objection.

Q Did you make any notes of your discussions in Florida?

Did you write any memoranda at any time thereafter of any of the discussions that had transpired in Florida?

A I might have prepared a one-paragraph summary of

the Data Lease proposal; I am not sure.

MR. WACHTELL: I call for the production of any such summary if it exists in the custody or control of Fitzgerald.

MR. KILL: So that we can move this deposition along, I will refer to my earlier answer with respect to your request for documents and incorporate it at this point with respect to your present request for documents.

Q Now, was there any discussion in Florida of any other possible takeover candidate other than Data Lease?

A The Delta Corporation was discussed.

Q And was anything done on that subject?

A There was extensive litigation pending in the Delta Corporation matter, which we decided to defer any decision on, doing anything about the company until that was settled.

Q Am I correct in understanding that this was litigation not involving Mr. Davis or Security?

A Correct.

Q Was there any discussion of any other takeover candidate?

A Not at that time.

Q You testified that you then went back to Atlanta with Mr. Davis, is that correct?

A Yes.

Q And how long did you then stay in Atlanta sir?

A I stayed another day on another matter.

Q Unrelated to Mr. Davis or Security?

A Yes.

Q Did you have any further discussion whatsoever with Mr. Davis either on the plane back to Atlanta or in Atlanta on this subject of a possible takeover of Data, Delta Corporation or any other candidate?

A No.

Q Any further discussion of the general subject of Cantor, Fitzgerald acting as investment maker to Security or Mr. Davis?

A No.

Q What happened next?

A Someone else moved into the Data Lease situation and acquired very, very substantial amount of shares, and ran the price up far beyond what we thought was a reasonable value.

Q When was that?

A The end of February.

Q So is it correct to say that you looked around for another possible candidate or candidates?

A Yes.

Q And who did the looking?

A Myself and Bruce Davis independently.

Q What did you do?

A I looked and I didn't find anything.

Q Did you communicate that to Mr. Davis?

A Not directly.

Q Did you communicate it indirectly?

A No, because he called me, and invited himself to New York, with a proposal.

Q When was that?

A Either the last week in February or the first week in March. Or the last week in February.

Q You met in New York?

A Yes.

Q Who was present?

A Miller, Davis and myself.

Q Did he bring papers with him, referring to Mr. Davis?

A Yes.

Q What did he bring?

A He brought files on about 25 real estate investment trusts.

Q When you say files, would you give me some description of what was in each file or a typical file?

A Published financial statements, annual report, 10-K's, proxies.

Q Was NJB one of the REITS?

A Yes.

Q Did you have one meeting or more than one meeting with Mr. Davis on that occasion?

A I don't recall, but I think that initially we had -- my best recollection is that we had one meeting.

Q Did you take any notes?

A No.

Q Did Mr. Miller, to your knowledge?

A To my knowledge, he did not.

Q Did Mr. Davis?

A I don't know.

Q Did you, or to your knowledge, or information, Mr. Miller write any memorandum subsequent to the meeting reflecting in whole or in part any of the matters that transpired at the meeting?

A No.

Q To your knowledge, or information, does there exist any other document of whatsoever description

including but not limited to any correspondence which reflects directly or indirectly any of the matters that transpired at that meeting?

A To my knowledge, there is no papers.

Q As of the period of time then shortly subsequent to that meeting, am I correct in understanding that other than a possible one-paragraph summary with respect to a proposed transaction involving Data Lease, there was to the best of your knowledge and information still no other scrap of paper generated by yourself or anybody else at Cantor, Fitzgerald with respect to Mr. Davis or Security?

MR. WILD: I object to the form of the question.

MR. WACHTELL: On what ground?

MR. KILL: I don't understand the question.

MR. WACHTELL: Maybe we have it read back.

MR. WILD: I objected on the ground of it being repetitious.

(Record read.)

MR. KILL: I continue my objection.

MR. WACHTELL: Very well, may we have an answer.

MR. KILL: Do you understand the question?

If you don't --

A To the best of my knowledge, there was no papers.

Q Would you tell me what was said by the participants at that meeting in New York between yourself, Mr. Davis and Mr. Miller?

A Mr. Davis presented an outline -- outlined a program and a concept pertaining to an investment in and possible acquisition and control of a REIT, in a conceptual way.

Q Tell me what he said, to the best of your recollection; if you remember the words, fine, if not, give me your best recollection of the substance.

A He explained his understanding how the REITS were formed, the basis of their trust -- the regulatory climate in which they were created, the method with which they operate, and the problems that so many of them were having with their underlying investments in holdings because of the lack of experienced management.

Q What else did he say?

A He developed that theory in detail as it related to a number of specific trusts.

Q How many?

A At least a dozen.

Q Was one of those NJB Prime?

A Yes.

Q What did he say to your best recollection about NJB Prime?

A At that time, really only a few comments. One had to do with a very, very strange warrant issue that they had outstanding, and another had to do with the fact that a very substantial portion of the portfolio was tied up in a reorganization proceeding with a Kassuba.

Q Anything else you recall on that?

A It was listed on AMEX, it had three thousand stockholders, general facts.

Q Now, what did Mr. Davis say with respect to this program of investing in and I think your words were and possible acquisition of control of a REIT? What type of investment, what type of control, did he talk about the manner of acquiring shares? What did he say his plans or thoughts were on the subject?

A He outlined for us the various alternatives that he had thought of that would apply to given situation.

Q Did he do this as to the REITS generally or do it as to each one?

A Generally.

Q Tell me what he said.

A He pointed out the precipitous decline in most of the shares of the REITS had had, the fact that in most of them, if not all of them, stockholders had fairly substantial losses.

He pointed to the fact there was advisory relationships with these various trusts, and that there were any number of possible ways of making a good investment in these trusts.

Q What did he say those number of ways were?

A Open market purchases, merger, acquisition of a portion of the advisor; purchase of some of the properties of the trust. Tax-free exchange with shares of beneficial interest.

Q With respect to NJB Prime, did he specify all or any of those five alternatives as being in his mind?

A Not specifically.

Q Other than the financial information that you have described with respect to the trusts themselves, did he bring any memorandum or outline of his concepts?

A No.

MR. WILD: Excuse me, are you asking did he show the witness one or does the witness know whether he may have had one?

MR. WACHTELL: To the witness' knowledge, did he bring one that would include and would not be limited to showing it to the witness.

Q What else was discussed at that meeting that you recall?

A We discussed a program of obtaining additional information on these -- on the group of trusts that he showed us, plus many others in analyzing the information.

Q And what was discussed?

A I don't follow the question.

Q You say you discussed a program of gaining additional information. What was said as to who would do what?

A We each took on different assignments as to gathering information.

Q Was that divided by particular trusts or by types of sources?

A Types of information.

Q And can you tell me what you took on, what did Bruce Davis take on, and what Mr. Miller took on, if anything?

A I took on the obtaining of 10-K's; and Davis took on the obtaining of annual reports and quarterlies.

Q Was there any discussion as to why you

would obtain these documents or why it would be desirable to obtain these documents?

A We wanted the documents to analyze the individual companies.

Q Was there any discussion as to why?

A We were looking to see what we considered in collective judgment to be the best investment.

Q And did you discuss the fact that it was desirable to have such documents as 10-K's, and reports and quarterlies available for review in order to make that investment determination?

A Yes.

Q And what is your view that it was?

MR. WILD: Objection to the form of the question.

MR. WACHTELL: I will withdraw the question.

Q Did you express the view that it was desirable to review such documents in order to make an informed investment decision as to whether to invest in such a Security?

A Yes.

Q Did Mr. Davis concur in that view?

A Yes.

Q Did Mr. Miller concur in that view?

A Yes.

Q Now, was there any discussion at that meeting as to how much financing would be necessary or -- excuse me, what financial resources would be necessary for the plans that were being discussed, and where that financial resource would be forthcoming from?

MR. KILL: Both parts of the question you want answered?

MR. WACHTELL: Yes, whether it would be needed and where it would be forthcoming from.

A No.

Q Was there any discussion at that meeting as to whether Cantor, Fitzgerald was prepared to take on Security or Mr. Davis as an investment banking client and on what basis?

A I decided that a sufficient time and expense had been invested in this work that we should come to some clearer understanding of our mutual relationship, if any, and the next time we would be in New York, we would attempt to reduce it to writing, so we would have a bona fide relationship.

Q Was there anything discussed about it orally at the meeting?

A To the extent that I said hey, I am spending a lot of time and money, and I want to get paid, yes.

Q Was anything said about what the basis of compensation would be or what you had in mind?

A I suggested a monthly retainer.

Q Did you suggest a dollar amount?

A No.

Q Did Mr. Davis say anything on the subject of compensation to Cantor, Fitzgerald?

A He agreed that a formal arrangement was in order.

Q What happened next?

MR. KILL: What happened next in connection with that -- at that meeting?

Q Any relationship between Cantor, Fitzgerald -- have you told me everything that transpired at that meeting to your best recollection?

A We made arrangements to meet in Atlanta, in a day or two.

Q Anything else you recall?

A No.

Q Before going to Atlanta, did you do anything else in connection with Mr. Davis or Security or as a followup to the meeting?

A I gathered the information that I was assigned to

gather, and studied it.

Q Are you talking about the 10-K's?

A Yes.

Q And how many REITS did you gather 10-K's on?

A I don't recall.

Q Can you give me your best approximation?

A A hundred.

Q Is it safe to assume that one of them was NJB Prime?

A Mr. Davis already had that file.

Q He already had the 10-K on NJB Prime, sir?

A As I said earlier.

Q You indicated what documents -- let me specify then. When Mr. Davis came to New York and met with Mr. Miller and yourself, as to NJB Prime, do you recall just which documents he had?

A Ten-K, which was a year and a half old, an annual report which was a year and a half old, two interim statements, two prospectuses, and a copy of their trust agreement or indenture, whatever the terminology is.

Q And did you gather any additional informa-

tion in going to Atlanta with respect to NJB Prime?

A No.

Q Did you, before going to Atlanta, prepare anything with respect to a compensation agreement for Cantor, Fitzgerald?

A No.

Q When did you go to Atlanta?

A About a day later.

Probably still in the last week in February, to my best recollection.

Q And what did you do in Atlanta with respect to Mr. Davis, Security, this project of Mr. Davis'?

A We singled out four --

Q Did you meet with Mr. Davis?

A In Atlanta.

Q Anybody else participate in the meeting?

A No.

Q Where did you meet, at his office?

A Yes.

Q You started to say you singled out four, would you continue your answer?

A Four REITS.

Q Was one of those NJB Prime?

A Yes.

Q Tell me what discussion you had at that time in substance which caused you to single out these four particular REITS, one of which was NJB Prime?

A We felt that all four of them represented good investment opportunities.

Q Was that all that was said?

A That was our conclusion.

Q Would you tell me then with respect to NJB Prime what factors you discussed with Mr. Davis which led you to that conclusion?

A Principally Mr. Davis felt that he and his operating people could solve the problems facing the trust; and thereby restore it to a profitable operation.

Q And which operating problems did he refer to?

A The substantial portion of the portfolio that was tied up in the bankruptcy. The substantial portion of the portfolio that was non-accruing, in addition to that; and a further substantial portion of the portfolio that was highly concentrated in one small company.

Q What company was that?

A Prime Motors.

Q What did Mr. Davis say as to how he and his

Excerpts from Deposition of Lawrence F. Orbe, III

people would solve the operating problems of that portion of the portfolio that was tied up in the bankruptcy proceeding?

* * *

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A At the time, it was not known whether NJB's Kasubba properties were going to be in the customer's package.

And so the program as it related to those Kasubba problem properties was general.

Q What was it as he expressed it?

A It had to do with discovery and inspection first, which had not been done.

Q Of what?

A Of the properties.

Q You say discovery and inspection?

A Yes.

Q Are you talking about in litigation or physical?

A Physical.

Q And hadn't he expressed the view that it

had not been done by whom?

A Security.

Q Did Mr. Davis indicate how, once properties that were tied up in the bankruptcy had been physically inspected by either he or his people, how he would go about solving the operating problems with respect to those properties?

A Not at that time.

Q Did he at any subsequent time?

A Sometime in June.

Q Let me for the moment stay with the discussion that you are having in Atlanta. Did Mr. Davis state how he and his people would go about solving the operating problems with respect to that portion of the NJB portfolio that was not accruing interest?

MR. KILL: Repeat the question.

(Record read.)

A Yes.

Q What did he say on that subject?

A He would foreclose on all of them, take possession, take whatever losses were required for tax purposes, as well as for shareholder reporting purposes, and reinvest the proceeds in proper earning assets.

Q At any time subsequent to that discussion in

Atlanta during which Mr. Davis expressed those views, did you again have occasion to discuss that subject with Mr. Davis?

A Yes.

Q Did he ever express a contrary or different view on that subject?

A As to those particular properties?

Q Yes. As to that portion of the NJB portfolio that was not accruing interest.

A Subsequently upon the receipt of NJB's belated 10-K, up to Data disclosure, was made as to their holdings. Security then made detailed physical inspections of those problem properties and formulated specific ideas with respect to each one.

Q When was that --

MR. WILD: Let the record reflect the entry of Mr. Schwarz.

A June.

Q Who at Security made the detailed physical inspection, if you know, of each of those properties?

A I don't know.

Q Were these plans with respect to each such property in writing?

A No.

Q Who conveyed them to you orally?

A They were not conveyed to me. I just know that they were formulated.

Q Now, getting back again to the meeting in Atlanta. What did Mr. Davis say to you about how he and his people would solve the operating problems of NJB Prime with respect to that portion of the portfolio that you expressed as having been concentrated in Prime Motor Inns?

A They would make every effort to diversify that portion of the other possession by selling or exchange with other REITS, to reduce the concentration of credit with one company.

Q At any time subsequent thereto, did you have any further discussion with Mr. Davis on that subject?

A Yes.

Q Did he ever express any view contrary or different to that which you have just described as having been expressed in Atlanta?

A No.

Q Now, with respect to this Atlanta discussion, what if anything was said on the subject of how much stock of NJB should be acquired, how Security or Mr.

Davis should go about any investment in NJB or the like?

MR. KILL: I will object to the form of the question. It is a multi-part question, and I think it should be rephrased.

MR. WACHTELL: I will stand on it.

MR. KILL: Do you understand the question in its full context, including and the like? If you don't, you need not answer.

A I would prefer it if we did it in pieces.

Q Was anything said on the subject of how much stock it would be contemplated to acquire in NJB?

A No.

Q Was anything said on the subject of how one would go about making an investment in NJB?

A We discussed contacting management to sit down and discuss ways in which they could work together.

Q What was said on that subject?

A I volunteered that I used to live in New Jersey, and knew some people.

Q At NJB?

A Yes.

Q And who were those people?

A Mr. Brassler.

Q Who else?

A Mr. Holloway.

Q Who else?

A That is all.

Q Now, what did you or Mr. Davis say on this subject of contacting management to sit down and work out ways that you could work together?

A It was agreed that when I got back to New York, I would attempt to communicate the interest of Security and see if we could arrange to sit down and talk about it.

Q Did you and Mr. Davis discuss in Atlanta what ways Mr. Davis or you had in mind that Security or Mr. Davis could work within NJB?

MR. WILD: I object to the form of the question.

MR. KILL: I join in the objection.

A We discussed the possibility of acquiring Prime Motor Inns, 49 percent ownership of the advisor.

Q Did you discuss any other way in which Security or Mr. Davis could work with NJB?

A We discussed acquiring all of their problem properties.

Q Any other way?

A We discussed acquiring the bank's interest in the advisor.

Q Any other way?

A We discussed the possibility of a real estate management agreement whereby the trust might retain the expertise, the real estate expertise of Security Management to assist them.

Q Any other way?

A We discussed the possible acquisition of the shares.

Q Any other way?

A No.

Q With respect to the possible acquisition of the shares, what was said on that subject?

A It was an alternative way of working together, whereby Security might make a major investment in new authorized but unissued shares of the trust.

Q Anything else said on this subject?

A No.

Q Did you discuss the possibility of acquiring shares already issued?

A Not at that time.

Q Did you make any notes of any of the discussions that you had on that occasion in Atlanta with Mr. Davis?

A No.

Q To your knowledge, did he?

A To my knowledge, he didn't.

Q Did you thereafter prepare any memorandum or other document or do you know of the existence of any document, memorandum, correspondence, or whatever, which reflects in whole or in part what transpired at that discussion between yourself and Mr. Davis?

A I don't know of any document.

Q You didn't prepare any document or memorandum?

A No, I didn't

Q Do you know whether he did?

A To my knowledge he did not.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

D-Z INVESTMENT COMPANY,

Plaintiff,

vs.

ROBERT E. HOLLOWAY, MELVIN S. TAUB, MAURICE J. BRICK, PETER E. SIMON, NORMAN BRASSLER, CHARLES GILLER, HERBERT E. HARPER, DR. GORDON McKINLEY, JAMES R. MOSELEY, III, JACK G. TAYLOR, DALLAS S. TOWNSEND, JR., and, NJB PRIME INVESTORS,

74 Civ. 2179
(I.B.W.)

Defendants,

-and-

SECURITY MANAGEMENT CO., INC., CANTOR, FITZGERALD & CO., INC., BRUCE R. DAVIS, JEROME ZIMMERMAN, RALPH M. BECKER, SAUL BECKER, BERNARD KROLL, MAX SOPHIER, HAROLD LEVOW, HAROLD B. LEVIN, HARVEY JACOBSON, and SEYMOUR WEINBERG,

Additional Defendants to Counterclaims

CONTINUED DEPOSITION of LAWRENCE F. ORBE, III, taken pursuant to Notice and Adjournment, held at the offices of Wachtell, Lipton, Rosen, & Katz, Esqs., 299 Park Avenue, New York, N. Y.

BENJAMIN REPORTING SERVICE
5 Beekman Street
New York, New York 10038
374 1138

on the 17th day of July, 1974 at 10:30 a.m., before Irwin H. Benjamin a Notary Public of the State of New York.

oOo

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* * *

Excerpts from Deposition of Lawrence F. Orbe, III

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Q Mr. Orbe, did Cantor, Fitzgerald purchase or place any order either for its own account, for the account of D-Z or Mr. Davis, or for the account of anybody else, shares of MJB yesterday?

MR. WILD: I object to the question in its present form.

Q May I have an answer, please?

MR. KILL: I object to the question in its present form.

Q May I have an answer, please?

MR. KILL: I will join in the objection.

A Yes.

Q Did it purchase shares?

A Yes.

Q How many?

A I would have to make a phone call.

MR. KILL: You need not. If you don't know how many, that is an adequate --

Q Give me your best approximation if you can't remember the precise number.

A Four thousand shares.

Q For whose account?

A D-Z.

Q Was that in a single trade or in more than one trade?

A I believe it was three.

Q What was the breakdown?

A Two thousand, two hundred and eighteen hundred.

Q What were the prices on each of the three trades?

A That, I am not sure of, because I was here.

Q At what time of the day were each of those three trades executed?

A The first two thousand was just before I came over here.

Q That is in the afternoon?

A Yes. So, let's say it was around one o'clock.

Q You came over here, we had a debate on the

subject, but it was sometime between three o'clock and four o'clock, just trying to refresh your recollection?

MR. KILL: 3:15 to be exact.

A What I am getting at, one of them was done while I was in the office, and the other two were done while I was here.

Q Which were which?

A I believe the two thousand was done while I was in the office, and the 1800 and the 200 were done while I was here.

Q What type of orders were placed?

MR. WILD: I object to the form of the question.

MR. KILL: I join in the objection.

Q Would you answer, please.

A I just heard --

MR. KILL: Do you understand the question? What type of --

A No orders were placed.

Q I want to see if I understand you. Did these trades take place on the American Exchange?

A Yes.

Q Was any order or orders placed or pending for the purchase of shares of NJB, placed or pending by

Cantor, Fitzgerald?

A No.

Q How did the orders come about, how did the trades come about?

A The stock was offered for sale.

Q By whom?

A Specialist.

Q And did Cantor, Fitzgerald communicate to the specialist or had Cantor, Fitzgerald communicated to the specialist its willingness to purchase shares?

A No.

Q Would you then explain to me the transaction, as you understand it, of how the Cantor, Fitzgerald Company ended up purchasing these shares on these trades?

A As to the first 2,000, the specialist contacted our man on the floor, and told him that there were two thousand shares available at a certain price. The man on the floor called the office in New York, and he said, what should I do? We said buy it. He went back and bought it.

Q What order or instructions did Cantor, Fitzgerald have from D-Z authorizing it to purchase such two thousand shares?

A We had instructions from the client to purchase shares in the open market after the stay was released or lifted.

Q You are talking about last Friday?

A Yes.

Q When did you receive such instructions?

A Mr. Wachtell, the same little calendar, okay?

Q Yes.

A Six o'clock European time, it was about 12:30 at night, Friday, the 12th.

Q Of July?

A Yes.

Q Were those from Mr. Davis?

A Yes.

Q To you?

A To -- yes, to myself and Mr. Miller, both. We were both on the phone.

Q At 12:30 at night, New York time?

A Yes.

Q Where were you?

A In the office.

Q At a half-hour past midnight this past Friday night, is that correct?

A Yes.

Q And Mr. Miller was there with you?

A Yes.

Q Was the purpose of your being in the office at that hour the matters of D-Z?

A No.

Q It was coincidental that you were there at a non-normal business hour, is that correct?

MR. WILD: Objection to the form of the question.

MR. KILL: I join in the objection.

MR. WACHTELL: I will stand by my question.

Q Is that correct?

A That is not uncommon for us to be working at those hours.

Q What were the instructions that you and Mr. Miller received from Mr. Davis at that time?

A Continue to buy shares in the open market now that you are permitted to.

Q Was any amount of shares or any total shares or any ceiling specified?

A No.

Q Open-ended?

A Yes.

Q Unlimited in quantity, is that correct?

A Yes.

Q Up to and including the total outstanding stock of D-Z, should that be offered in the open market?

MR. KILL: If you had any discussions concerning that kind of --

Q Was there any discussion of whether there was any ceiling whatsoever on the number of shares that should be purchased on behalf of D-Z if offered on the open market?

A Not on that phone call.

Q Had there been at any prior time?

A Yes.

Q When?

A On many occasions.

Q In the phone call with Mr. Davis on half-hour past midnight Friday night, was there any discussion as to the price or any limitation on the prices that you were authorized to pay for shares of NJB?

A No, because we had a previous understanding.

Q And what was that previous understanding?

A We would endeavor to buy stock only as it sold down.

Q Would you explain that, please?

A If the specialist was making a market five and an eighth, five-eights; we would endeavor to buy stock at no more than a quarter; assuming the last sale was say, five and three-eighths.

Q Did you follow those instructions?

A Yes.

Q Did you ever buy on an up-tick?

A Yes.

Q Then you did not follow those instructions, is that correct?

MR. KILL: Objection to the form of the question.

A These are not instructions. It is a matter of policy.

Q I am trying to find out whether you followed that policy or whether you varied from it?

A I said we would endeavor.

Q But when you say you in fact bought stock on an uptick, am I correct in understanding that that would be a variation from that policy?

A Yes.

Q Did you frequently buy stock on an uptick?

A No.

MR. KILL: Objection to the form of the question.

Q Did you buy it on more than one occasion?

A Yes.

Q More than five occasions?

A I don't believe so.

Q Going to the instructions that you had from Mr. Davis prior to half-past midnight this past Friday night, was there any dollar amount per share ceiling placed on your instructions as to what you should pay?

MR. KILL: I will object to the form of the question.

MR. WACHTELL: I will stand by it.

A Repeat the question.

(Record read.)

A Our agreed-to policy in that area was that we would not purchase stock above the highest price paid for it in the most recent preceding trading sessions.

Q What is that in dollars?

A Relating it to the immediate transaction that we had been discussing, that would be about six.

Q Are your instructions still open, are they still in existence as we sit here now?

A Yes.

Q So that we may have no misunderstanding then, Cantor, Fitzgerald at present is operating under instruc-

tions to buy on behalf of D-Z all stock in NJB that is offered, subject to the price parameters that you just mentioned?

MR. KILL: I will object to the form of the question. You are characterizing the witness' testimony. I think he already testified to facts, and the record will show what the facts are based on the testimony.

MR. WACHTELL: I will stand on my question.

Q May I have the answer?

MR. KILL: Would you like it reread, since it attempted to summarize and there are many aspects to it?

(Record read.)

A I agree with that statement.

Q Now, did you have any discussion with Mr. Davis at half past midnight this past Friday night, as to how D-Z would pay for such stock?

A Yes.

Q What was that discussion?

A It was understood that these purchases would be for cash, regular settlement.

Q No margin whatsoever, is that correct?

A That is correct.

MR. WILD: Objection to the form of the question.

Q Did you have any discussion with Mr. Davis as to whether the shares that were thus purchased would stand against the previous margin account?

A No.

Q Is it your understanding that they would?

A No.

Q Again, out of an excess of caution, I want to be sure I understand you, and I will concede in advance, Mr. Kill, this question is probably technically repetitious.

Your understanding is that in calculating the margin level on the previous NJB stock, purchased by D-Z through Cantor, Fitzgerald on margin, that the new stock that is being bought for cash will not be taken into the calculation, is that correct?

A Yes.

MR. WILD: I object to the form of the question.

MR. KILL: I will object also, but perhaps some clarification with Mr. Wachtell's indulgence.

I am not sure that this question and the prior question are clear in scope in the context

of whether or not they relate, and when you say all stock of NJB, whether we are talking about stock which is offered over the counter or across an exchange; whether it is a private transaction or something that is publicly traded.

I don't know if you had any distinction in mind. I don't know if the witness did, but perhaps in my mind, there was some confusion.

MR. WACHTELL: I didn't, Mr. Kill, and I don't think there was any confusion. Just to verify it, I will clarify it with the witness.

There have been 13(d) statements filed by NJB, which indicated the purchase of a number of shares of NJB stock on margin with Cantor, Fitzgerald.

The witness has now testified that Cantor, Fitzgerald is purchasing stock for NJB for cash account?

A Yes.

MR. WACHTELL: I have sought to clarify with the witness, that it is his understanding that in calculating the margin levels as to the margined stock, the new stock, if I may term it as such, which is being purchased for cash is not being taken into calculation, is that correct?

A Yes.

Q When did D-Z commence purchasing NJB shares for cash as distinct from a margin account, through Cantor, Fitzgerald?

MR. KILL: I will object to the form of the question.

MR. WACHTELL: I will stand on it.

A I am not sure.

Q What is your best recollection?

A A day or two before the stay was put into effect.

Q Looking at your calendar then, that would be something on the order of Monday of last week, which I think was the eighth or the preceding Friday which was the fifth, is that correct?

A It was -- either one of those days, I believe, because I was in Europe and I am not sure.

Q And did you have a discussion with Davis at the time that cash purchases were instituted?

MR. KILL: I will object to the form of the question. Are you talking about the policy purchased by cash or at the time of the institution by the actual acquisition of the stock by cash?

Q At the time of the policy, I will take your

Excerpts from Deposition of Lawrence F. Orbe, III

suggestion, Mr. Kill, at the time it was determined that stock would be bought in a cash account as distinct from a margin account?

A No.

(continued on next page.)

Q Can you tell me when instructions were received by Cantor, Fitzgerald to purchase stock on behalf of D-Z of NJB in a cash account as distinguished from a margin account?

A It was one of those two days, and I wasn't here. I was in Europe.

Q Do you know to whom the instructions were transmitted?

A To Mr. Miller.

Q In your half past midnight Friday night conversation with Mr. Davis, was it discussed where D-Z would get the source of funds to buy NJB shares for cash?

A No.

Q Had you previously had any discussion with Mr. Davis or anybody else on behalf of D-Z on that subject?

A No.

Q Do you have any knowledge or information of any such conversation between Mr. Miller and Mr. Davis or anybody else on behalf of Cantor, Fitzgerald and Mr. Davis, or anybody else on behalf of D-Z on that subject?

A No.

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Q As you sit here now, do you have any understanding or information as to the source of funds being utilized by D-Z to purchase NJB shares for cash?

A No.

Q Are you familiar with the Know Your Customer Rule?

A Yes.

* * *

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Q What knowledge or information do you have as to what, if anything, Cantor, Fitzgerald has done to ascertain whether D-Z has the financial resources to pay for the purchases that are being made in cash trades upon the settlement dates?

A Pursuant to the Know Your Customer Rule, we have satisfied ourselves that the company has sufficient resources.

Q And what, if anything, have you done on that with respect to the trades that are being presently executed, for example, yesterday?

A We satisfied ourselves.

Q And would you tell me what information you have which you deem or if you do -- do you know what information Cantor or do you have any information

as to what information is presently available to Cantor, Fitzgerald to satisfy itself that D-Z has the financial wherewithal to pay for those shares?

A We satisfied ourselves.

Q Would you tell me what information you have as to what Cantor, Fitzgerald has learned which -- what does it know, if you know, which has satisfied it?

A We have bank references.

Q Anything else?

A Financial statements.

Q You do have financial statements of D-Z?

A Of D-Z?

Q Yes.

A No.

Q Have you ever seen a financial statement of D-Z?

A No.

Q Whose financial statement do you have?

A Bruce Davis.

Q Has Mr. Davis pledged his personal credit to the purchase or payment of shares being purchased on behalf of D-Z?

A No.

* * *

Q Would you explain to me Mr. Orbe in what manner you deem Mr. Davis' financial, personal financial statement to be germane to D-Z's ability to pay for the shares based on your understanding that Mr. Davis has not personally agreed to pledge his credit for the payment?

MR. KILL: I will object to the form of the question.

MR. MACHTELL: I will stand on it.

A I am not sure I even understand it.

(Record read.)

A Our understanding is, as required, Mr. Davis will make an equity investment in D-Z.

Q What is the basis for your understanding?

A Conversation.

Q When?

A On several occasions.

Q When was the first one?

A April.

Q And where was that conversation?

A On the telephone.

Q Who participated?

A Miller, myself and Davis.

Q Tell me what was said.

A My best recollection is that Davis was in Atlanta, and Miller and I were in New York, and the purpose of the phone call was to assure ourselves that sufficient cash would be available for purchase. And Mr. Davis indicated to us that we had his financial statement, yes, we did, and as required, he would make equity investment in D-Z to provide cash funds for the purchase of shares.

Q Was any dollar amount discussed?

A No.

Q Did you or anybody else write any memorandum of the conversation?

A No.

That was the week of April 15.

Q To your knowledge, has Mr. Davis in fact made any such equity investments since that date?

A I don't know.

Q I think you indicated you had subsequent conversations on the same subject?

MR. KILL: I will object to the form of the question.

MR. WACHTELL: I will stand on it.

A Yes.

Q When were they?

A In June.

Q When?

A The week of June 17.

Q Was that a telephone conversation?

A On that particular occasion, I think we were in a meeting on some other matter. We asked Davis the same question.

Q Where was the meeting?

A In our offices.

Q What did he say?

A He assured us that funds would be made available to D-Z as equity funds is required.

Q By him?

A That is correct.

Q Any dollar amount discussed?

A No.

Q Does there exist any document, memorandum, notation or entry in the books, papers or records of Cantor, Fitzgerald reflecting this commitment by Mr. Davis?

MR. KILL: I will object to the form of the question.

MR. WACHTELL: To the witness' knowledge or information.

A No.

Q There does not?

A No.

Q Have you read D-Z's 13(d) filing and the three amendments thereto?

A I glanced at the first filing. I have not seen the three amendments.

* * *

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Q Mr. Orbe, how many shares of NJB did Cantor, Fitzgerald buy on behalf of D-Z on Monday, if any?

MR. WILD: I object to the form of the question.

MR. KILL: I join in the objection. I think you ought to characterize Monday a little more

specifically. You mean last Monday?

Q This is Wednesday the 17th, Monday the 15th, I asked him about yesterday, and now I am asking him about the day before yesterday?

A Before I answer that question, Mr. Wachtell, I want to correct something that has been said previously.

Q Go ahead. Any time you feel --

A You extracted from several comments of me a word "commitment."

Under no circumstances did either Mr. Miller or myself ever use that word, understand that word to have existed or relied upon it; in the context of that conversation that we had.

Q Are you now saying that you didn't think there was a commitment from Mr. Davis to put funds --

A I never used the word "commitment." We had a verbal assurance that as required, Mr. Davis would make equity investment in --

Q You understood verbal assurance to be something different than commitment?

A Yes.

Q And it was verbal assurance that you were relying upon, and are continuing to rely upon in placing cash orders for the purchase of NJB on behalf of D-Z,

is that correct?

MR. KILL: That is not his prior testimony.

Q Is it that verbal assurance that you were relying upon yesterday that you presumably are relying upon today in continuing to place orders for shares of NJB on behalf of D-Z?

A No.

Q What other than that verbal assurance are you relying upon as to D-Z's ability to pay for the shares?

A The whole set of factors which enter into the know-your-customer rule.

Q Can you tell me what else you know to indicate to you that D-Z has any --

A I testified earlier, we have bank references and financial statements.

Q You indicated to me you didn't have a financial statement of D-Z, do you have a bank reference of D-Z?

A Yes.

Q From what bank?

A I have to check my records at the office.

* * *

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MR. WACHTELL: I am going to mark Defendant Trustees' Exhibit 7 for identification the copy of the Schedule 13(d) which has been produced from the files of Cantor, Fitzgerald.

(Copy of Schedule 13(d) marked Defendant Trustees' Exhibit No. 7 for identification, this date)

MR. WACHTELL: And I will mark as Exhibit 8 for identification, the amendment No. 2.

I will mark Exhibit 9 for identification the amendment No. 3.

I will mark as Exhibit 10 for identification the form 3 that I previously described, and I will mark as Exhibit 11 for identification, the copy of the list of holders of MJB Prime.

(Amendment No. 2 marked Defendant Trustees' Exhibit No. 8 for identification, this date.)

(Amendment No. 3 marked Defendant Trustees' Exhibit No. 9 for identification, this date.)

(Form 3 marked Defendant Trustees' Exhibit No. 10 for identification, this date.)

(Copy of the list of holders of MJB Prime marked Defendant Trustees' Exhibit No. 11 for identification, this date.)

* * *

Excerpts from Deposition of Lawrence F. Orbe, III

Q How many shares were purchased on Monday, the day before yesterday?

A 400.

Q Total?

A Yes.

Q How many shares were purchased --

MR. WILD: Hold it one second.

A That would be Monday the 15th of July.

Q Yes.

How many shares were purchased on Friday, the 12th, and by shares being purchased, you understand, I am asking you by Cantor, Fitzgerald of D-2 of NJB?

A On the American Stock Exchange?

Q Or otherwise.

MR. KILL: What date?

Q Let's stay with Monday the 15th?

A 400.

Q And Friday the 12th?

A That was the day that the stay was lifted, is that right?

Q Yes.

A 1100.

Q Now, do you have any knowledge or information as to whether on any of those three days any shares of NJB were purchased by or on behalf of D-Z other than through Cantor, Fitzgerald?

A Shares were not.

Q To your best knowledge, the sole purchases on behalf of D-Z on those three days were 4,000 shares yesterday, 400 shares the day before, and 1100 shares the preceding Friday, is that correct?

A Yes.

Q Do you know whether Mr. Davis or D-Z have any instructions to any other brokerage firm outstanding and in existence to buy shares of NJB?

A To the best of my knowledge, they do not.

Q Do you have any knowledge whether they have

any orders placed?

A To the best of my knowledge, they do not.

Q Has there been any margin call at any time by Cantor, Fitzgerald to D-Z with respect to shares of NJB or involving in whole or in part shares of NJB?

A No.

Q Since April of 1974, commencing April 1st, has Cantor, Fitzgerald purchased any shares of NJB for its own account?

A No.

Q Has it purchased any shares of NJB for the account of any other customers?

A No.

Q To be sure we are clear on this, the sole trades in the shares of NJB that have been executed by Cantor, Fitzgerald at any time from April 1st, 1974 to the present date, have been for the account of D-Z?

A ONe exception.

Q What is that?

A 10 shares.

Q You know, I don't think I will even bother to ask you further questions on that.

Directing your attention, Mr. Orbe, to

Exhibit 7 for identification, which is the 13(d).

Is this the document that you previously testified you scanned?

MR. KILL: Or a copy.

Q Or another copy of the same.

MR. WILD: I would like the record to reflect that my recollection of the witness' testimony is that he glanced at it.

MR. WACHTELL: I will accept the witness' testimony for whatever it was. I am not sure that the two are not relatively synonymous, but I am not seeking to alter the witness' testimony.

A Yes.

Q Directing your attention to the exhibit to that agreement, which appears to be a letter agreement between Cantor, Fitzgerald and Mr. Bruce R. Davis, Chairman of the Board, Security Management Company. There is a reference in the first paragraph of this letter agreement to "Prior agreements evidenced by letters of March 22, 1974 and April 16, 1974."

MR. WACHTELL: Can we have copies of those produced?

MR. KILL: I do not believe they are here. I will certainly take your request under advisement.

MR. WACHTELL: Okay. I call for production of such agreements, please.

MR. WILD: You are examining that other document, would you allow me to examine the letter to which you made reference.

MR. WACHTELL: That's what I am examining.

MR. WILD: I am sorry.

MR. WACHTELL: It is part of the same exhibit, Mr. Wild.

Q Do you recall any reason why this letter agreement of April 25, 1974 was entered into between Cantor, Fitzgerald and Security Management as distinguished from CAntor, Fitzgerald and D-Z?

MR. KILL: Does he recall or does he know, I am not sure.

Q Does he know whether there was any reason, and if so, does he recall it?

A No.

Q Has there ever been any agreement in writing between Cantor, Fitzgerald and D-Z of any nature whatsoever?

MR. KILL: Other than the usual account agreements or is this a broad question encompassing any and all --

MR. WACHTELL: I will accept the original, a

normal account agreement on the assumption that such will be produced together with any application therefor; data designed to satisfy the Khow-Your-Customer-Rule or the like; yes.

Q Other than a normal account agreement for a brokerage firm, has there ever been any agreement between Cantor, Fitzgerald and D-Z itself?

A I don't believe so.

Q Directing your attention to this April 25, 1974 letter, let me come around, so we can look at it together, you will note that the language appears in the second paragraph "This firm" referring to Cantor, Fitzgerald, "shall act on your behalf (or on behalf of your assignee corporation) etc cetera."

Has Cantor, Fitzgerald ever received any assignment from SEcurity designating D-Z or any other corporations as assignee of that letter agreement?

A I don't know.

Q Do you know of the existence of any such assignment?

A No.

Q NOw, I think at the close of the session yesterday, Mr. Orbe, you had been testifying with respect to a meeting that you had with Mr. Davis and

I think we were in Atlanta, and without meaning to characterize your testimony, but basically just to put us all in the same frame of reference. I think you basically testified that in that discussion you had singled out 3 REIT's, one of whom was NJB Prime, and Mr. Davis was explaining to you how he and his people anticipated they could solve the operating problems, and I was asking you a series of questions on that score.

Now, during the course of your testimony, you indicated that you told Mr. DAvis during that meeting that you knew people at NJB Prime, and you referred to Mr. Brassler and Mr. Holloway.

MR. WILD: I understand what you are apparently trying to do is to bring the witness' attention back to a situation that you were talking about yesterday.

I have no objection to your doing that. However, I do object to characterization of the records, and the record will, of course, speak for itself.

MR. WACHTELL: I think I so indicated.

MR. WILD: I do not believe so.

Q Did you tell Mr. Davis during the course

of that discussion how you happened to know Mr. Brassler and Mr. Holloway, other than you said yesterday, that you lived in New Jersey?

A I indicated to him that my family had known them for sometime.

Q Did you indicate anything else?

A I suggested to him that the relationship was one of long-standing, and that I would be very happy to attempt to contact them on his behalf.

Q Did you indicate the nature of the relationship that your family had with those gentlemen?

A Yes.

Q What did you tell him?

A I told them that my father and I had known Mr. Brassler for many years, and in fact had been on the advisory board of the bank for many years.

Q Referring to the New Jersey Bank?

A Yes.

Q Is your father still on the advisory board of the bank ?

A I don't believe so.

Q When do you understand he ceased to be so?

A I believe he was up for retirement about a year ago.

Q Did you tell him anything else about your father's relationship with New Jersey Bank?

A No.

Q Did you offer, during the course of that discussion,any facts or information which would bear upon the desirability or lack of desirability of choosing NJB Prime as the takeover target?

MR. KILL: I will object to the form of the question.

A Only to the extent that I felt in view of the problems of NJB Prime that the bank might be very anxious to do something constructive to resolve the problems, because of the involvement of their fine bank's image with this problem situation.

Q Did you deem them to be a fine bank?

A Yes.

Q Did you deem them to have high integrity?

A Yes.

Q Did you deem them to have ability?

A Yes.

Q Did you say anything else of any knowledge of any information that you had as to the desirability or undesirability of singling out NJB Prime?

A No.

Q Do you recall anything else that was discussed at that meeting in Atlanta?

A No.

Q Was any decision made as to which of the four should be selected?

A Not at that time.

Q What happened next?

A I had a meeting in Florida on Saturday March 16th.

Q With whom?

A Barry Silverstein.

Q Who is he?

A He is a 49 percent stockholder in a company called Coaxial Communications. 51 percent is CNA Financial.

Q And did you make any notes of that meeting?

A No.

Q Have you subsequently written any memorandum of that meeting?

A No.

Q To your knowledge, does there exist in the possession of Cantor, Fitzgerald or yourself for that matter any document, correspondence, or anything else that reflects the meeting?

A No.

Q Was anybody else present?

A There were two other associates of Mr. Silverstein, and I don't recall their names.

Q Tell me what was said?

A The purpose of the meeting was to discuss -- let me back up. What was said, I presented to Barry Silverstein a program for the purchase of control of a REIT, whereby Security Management and CNA would form a partnership, such partnership would effect a tender offer for control of a REIT.

Mr. Silverstein expressed great interest in the program and pointed out that CNA already owned some hundred thousand shares of NJB Prime.

Q Had you been aware of that procedure at that time?

A Yes.

Q What was the source of your information?

A Vickers Guide.

Q Did you prepare preparatory to that meeting with Mr. Silverstein, any notes or outline of what you wanted to talk to him about?

A No.

Q For your own guidance?

A No.

Q Did you take with you any documentary

material to lay on the table or give to him at the meeting?

A Yes.

Q And what did you take with you?

A I gave him 10 K's, proxies, prospectuses, and annual reports on the 4 REIT's we had previously discussed in Atlanta.

Q Mr. Orbe, I know that an examiner is never supposed to ask a why question, but I want to ask it.

Why, why did you give these to him?

MR. WILD: I object to the form of the question.

MR. WACHTELL: When I say that an examiner is never supposed to ask it, Mr. Wild, I did not mean that it was improper in form. I meant that it is usually viewed to be incredibly stupid to ask it, nonetheless, I will take my chances.

Q Why?

MR. WILD: I wasn't keenly aware of that.

A I viewed my function in that meeting as a salesman; and those were my tools in trade, the documents of the four target companies.

Q Did you think this was something he would be interested to see in evaluating the situation?

A Yes.

Q Did you think that it was something that an intelligent investor would want to see in evaluating a potential investment?

MR. KILL: I object to the form of the question.

A Yes.

Q Had you discussed with Mr. Davis prior to going to Florida for this meeting with Mr. Silverstein, the fact you were going to do so?

A No.

Q To the best of your knowledge, was Mr. DAvis aware prior to your meeting with Mr. Silverstein that you were doing so?

A No. To the best of my knowledge, he was not aware of it.

Q In your own mind, you were having this meeting on behalf of Mr. Davis or Security, is that correct?

A Yes.

Q Was anything else said at that meeting that you recall between Mr. Silverstein and yourself, how was it left, for example?

MR. KILL: How was that--

Q Do you recall anything else being said?

A Yes.

Q Tell me what you recall.

A Mr. Silverstein indicated that if a decision was eventually made to proceed, it would involve considerable amount of time and expense, special counsel, and many meetings in New York. He wanted very much to meet Mr. Bruce Davis to discuss with him this extensive involvement, if you will, and gave me instructions to make preliminary inquiries of Skadden, Arps.

Q Was this for the purpose of ascertaining whether Skadden, Arps, would be desirous of representing the venturers in this prospective, possible-tender offer?

* * *

Q The witness' answer was yes in any event.

Who first suggested Skadden, Arps, you or Mr. Silverstein?

A Mr. Silverstein.

Q Was anything else said at the meeting with Mr. Silverstein that you recall?

A Through a series of complicated travel arrangements, it was set up for Bruce Matthews of CNA, and Barry Silverstein to meet with Bruce Davis, and Saul Becker in Florida on March 21st.

Then I returned to New York that Sunday.

Q Did you communicate to Mr. Davis subsequent to your meeting with Mr. Silverstein, the substance thereof?

A Yes.

Q And what did he say?

MR. WILD: The substance of his conversation with Mr. Silverstein?

MR. WACHTELL: Yes.

Q What did he say?

A He was agreeable to the meeting and went to Florida.

Q Did he express any view as to the desirability of this approach that you had undertaken to attempt to potentially enlist CNA as joint venturer, so to speak, in

a takeover attempt?

A He was very enthusiastic about it.

MR. KILL: I object to the form of the question.

Q In your discussions with Mr. Silverstein, had you discussed as between Davis, Silverstein -- Davis, Security on the one hand, and CNA on the other, which of the two venturers would bring what to the venture?

MR. WILD: I object to the form of the question.

MR. KILL: I join in the objection.

* * *

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Q Was there, Mr. Orbe?

A The concept was that CNA would provide the cash, and that Bruce Davis, Security Management, et al., would provide the expertise, the real estate know-how, and the working troops, if you will.

(Continued on following page)

Q And I think that you said that when you reported this back to Mr. Davis, he was enthusiastic about the concept, is that correct?

A Yes.

MR. KILL: I will object to the form of the question.

Q Did Mr. Davis say to you in that conversation in words or substance, "What are you doing bothering yourself with attempting to come up with financing for the takeover?"

MR. KILL: Objection to the form of the question.

A Reread the question.

(Record read.)

A No.

Q Did he say to you in words or substance, "That isn't what I wanted Cantor, Fitzgerald for. That isn't why I bought you into this picture"?

MR. KILL: Objection to the form of the question.

A No.

Q Did you attend the meeting in Florida on March 21?

A No.

Q Did anything else in this ongoing series of events leading to a possible takeover happen to your knowledge between your meeting with Mr. Silverstein in Florida, and this March 21 meeting which was being scheduled?

MR. KILL: Objection to the form of the question.

MR. WILD: May I ask to have it read back?

(Record read.)

A When I returned to New York, I talked to Mr. Brassler on the phone.

Q Was that following up the discussion that you had had with Mr. Davis about possibly contacting the people at NJB Prime?

A Yes.

Q And what was your conversation with Mr. Brassler in substance?

A I asked him if we could get together for a lunch or a meeting, to discuss a genuine interest on the part of one of our clients of making an investment in or otherwise getting involved in the operations of NJB Prime.

Q What did he say?

A He pointed out that NJB Prime had not completed

its audit, was in lengthy meetings and discussions with its accountants, was in active negotiations with its line banks to renew the bank lines, and was in active negotiations to attempt to resolve the problems of the Kassuba Properties; and that with things being in such a state of flux and confusion, he felt it would be quite difficult to discuss any possible way of working with the trust for some time.

Q In your conversation with Mr. Brassler, did you identify your client?

A No.

Q Did he ask?

A No.

Q Did you have any further conversation with Mr. Brassler at or about that time?

A We exchanged a great deal of pleasantries, and --

Q You misunderstood my question.

My question was not clear. You called him basically to ask for a meeting?

A Yes.

Q Was a meeting arranged?

A No.

Q He indicated he didn't think it would be fruitful at that time, in substance, is that correct?

A Yes.

Q In your telephone conversation with Mr. Brassler, did you tell him that your client was interested in taking over control of a REIT?

A No.

Q Did you tell him that your client was about to meet with CNA, which was a hundred thousand shareholder of NJB Prime?

A No, because CNA told me not to.

Q In any event, you didn't tell that to Mr. Brassler, is that correct?

A Yes.

Q Did you tell him that you had met with Mr. Silverstein to formulate -- or at which you had discussed a possible plan for taking over one of four REITS with CNA to provide the financing, and your client to provide the knowhow?

MR. KILL: Objection to the form.

A No.

Q Do you recall anything else of your conversation with Mr. Brassler?

A No.

Q Have you ever seen any notes or memorandum or other document reflecting what transpired at the March 21 meeting?

A Yes.

Q And what is the nature of such document?

A A letter of intent between CNA or its designee, and Security Management.

Q Does that bear a date?

A I believe it is dated the 21st.

MR. WACHTELL: I call for the production of such document.

MR. KILL: We will take your request under advisement.

Q Is that document in New York, Mr. Orbe?

A I believe it is.

Q Or a copy of it?

A I believe so.

Q Would you describe for me the substance of that letter of intent?

* * *

MR. WACHTELL: Let's have the question read back.

(Record read.)

A As I best recall it, the substance of the letter was that an equity partnership was to be formed between Security Management or one of its designees; and Mr. Silverstein's company or some other designee of CNA, on the ratio of 51 to 49, the 49 percent being CNA.

Q For what purpose?

A For the purpose of acquiring controlof NJB Prime.

Q Did the agreement indicate how much of the shares were intended to be acquired?

MR. KILL: The agreement speaks for itself.

MR. WACHTELL: Yes, it does, I don't have it here.

MR. KILL: You asked him whether the agreement indicates. You can ask him once again, if you are pursuing this line of questioning, whether he has any knowledge, any recollection of the substance of the agreement --

MR. WACHTELL: I will take your question.

A I don't remember.

Q At the time that that letter of intent was entered into, which I think you indicated was March 21?

Excerpts from Deposition of Lawrence F. Orbe, III

A Yes.

Q Did you become aware of the existence of that letter of intent at that time?

A Yes.

Q You were aware at that time that CNA held a 100,000 shares of NJB Prime, is that correct?

A Yes.

Q Were you aware that that was over five percent of the shares of NJB Prime?

A Yes.

* * *

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Q Were you aware at that time that there are any requirements in the securities laws for filing Schedule 13(d)'s or amendments thereto?

MR. KILL: My objection still stands. If you want the witness to generally comment on an objectionable question, which has no relevance to the ultimate issue here, the witness is free to.

A I was.

Q Were you aware whether CNA had filed any

such Schedule 13(d) and/or amendments thereto with respect to its over five percent holding of NJB Prime?

MR. KILL: Objection to the form of the question, particularly the word "such." I think it connotes something that has not been established as a necessary filing.

A I didn't know.

Q You didn't know whether any such Schedule 13(d) had or had not been filed, is that correct?

A The holding of NJB was in another real estate investment trust.

Q Larwin?

A I believe it is called CNA Larwin.

Q Is that a subsidiary or an affiliated company of CNA?

A I don't know whether it is deemed to be or not.

Q Did you have any knowledge as to whether any Schedule 13(d) had been filed by CNA, by Larwin or by any other related entity with respect to the hundred thousand shareholding in NJB Prime?

A No.

Q When you became aware of this letter of intent for an equity partnership, as you have described it, between Security Management, or its designee on the

one hand, and CNA or its designee on the other, to take over control of NJB Prime, did you give any thought as to whether the entering into of such an agreement with a more than five percent holder of NJB Prime required any filing of any Schedule 13(d) or any amendment thereto?

MR. KILL: Repeat the question before it is answered.

(Record read.)

A No.

Q Did you say to Mr. Davis or to anybody else in words or substance, "You have now essentially formed a group, with a more than five percent holder, you are required to make a filing under the securities laws."

MR. KILL: Objection to the form of the question.

A No, I said no such thing, because it was merely a letter of intent.

* * *

Q Mr. Orbe, did you prepare, or to your knowledge or information, did anybody else prepare for Mr. Davis' use, preparatory to his March 21 meeting with Messrs. Matthews and Silverstein, any materials to be utilized by him or available to him for that meeting?

A To the best of my knowledge, no.

Q What happened next, after that March 21 meeting, and letter of intent with respect to this plan to take over control of NJB Prime?

A I talked to Mr. Brassler again.

Q When?

A One of those days, right around there. I believe I called him and he returned my call.

Q Would you tell me what was said?

A I had dropped Mr. Brassler a note after our other conversation, and he called to respond to it, and to tell me that he was going to go to Bermuda for a short rest, and that he had given my note to Mr. Holloway,

and that hopefully, the certified statements would be prepared soon, and at that time, why don't you plan to visit with Mr. Holloway on the phone.

Q Did you keep a copy of the note?

A That I dropped to Mr. Brassler?

Q Yes.

A Yes.

* * *

MR. KILL: Mr. Wachtell, I produce a copy of a letter from Mr. Orbe to Mr. Brassler, dated March 19, 1974, which I think is the letter the witness just alluded to.

MR. WACHTELL: We will mark this as Defendant Trustee's Exhibit 12 for identification.

(Document referred to was marked Defendant Trustee's Exhibit 12 for identification.)

* * *

AFTERNOON SESSION 170

1:45 P.M.

L A W R E N C E F. O R B E, I I I, resumed

* * *

MR. KILL: We have the document alluded to during the morning examination. It is a two-page letter, apparently signed by Barry Silverstein, to Mr. Bruce Davis, dated March 21, 1974, and I produce that document pursuant to your request.

MR. WACHTELL: I will mark it as Defendant Trustees' 13 for identification.

(Two-page letter dated March 21, 1974 marked Defendant Trustees' Exhibit No. 13 for identification, this date.)

EXAMINATION BY

MR. WACHTELL:

Q Mr. Orbe, I show you Defendant Trustees' Exhibit No. 12 for identification, which is your letter of March 19, 1974, to Mr. Brassler. I take it

you sent him the original of this letter on or about that date?

A Yes.

Q And who is the client that is referred to in that letter?

A Security Management.

Q In the letter you say "Our client is a strong company with access to considerable financial backing."

Would you tell me what you were referring to by the words "Considerable financial backing?"

A It was a general comment based upon our understanding of Security Management.

Q Was it your understanding when you say "with access to considerable financial backing" that this financial backing was something that Security who, if necessary, appropriate and desirable would go out and procure?

A Yes.

Q And what source or sources did you have in mind at the time you wrote this letter that Security would go to for such financial backing?

MR. KILL: Objection to the form of the letter.

Q Did you have any source or sources in mind at the time you wrote this letter, to which Security would go for such financial backing?

A We had prior knowledge of sizable transactions that Security had entered into with people such as Barnett, Winston Trust.

Q Was that one source you had in mind?

A Yes.

Q Did you have any source in mind?

A The company had considerable dealings in sizable transactions with Paul Revere.

Q Did you have any other source in mind?

A Not specifically.

Q At the time you wrote this letter, did you have any knowledge or information as to whether there had been any communication between Mr. Davis, or anybody else on behalf of Security with Barnett, Winston Trust with respect to the potentiality of providing financial backing for the takeover of NJB Prime?

A No.

Q The same question as to Paul Revere?

A No.

Q Did Mr. Brassler reply to this letter?

MR. WILD: I think it is repetitious.

A Yes, as I testified earlier, we talked again on the phone before he went to Bermuda, and he acknowledged the receipt of the letter, and said he had given it to Mr. Holloway.

Q He didn't reply in writing?

A No.

Q Did Mr. Holloway reply in writing?

A No.

Q Did either Mr. Brassler or Mr. Holloway or both of them, then indeed sit down and discuss the matter?

A No.

Q Now, directing your attention to your April 25, '74 letter agreement with Security, which is an Exhibit to the 13(d), Exhibit 7 for identification.

MR. KILL: When you say your, you mean Cantor, Fitzgerald?

MR. WACHTELL: Yes.

Q Without attempting to characterize the documents, there is reference to Cantor, Fitzgerald using its best efforts to obtain funds sufficient to permit purchase of shares of the company on margin, et cetera, et cetera.

Has Cantor, Fitzgerald done that?

MR. KILL: Would you show the witness the document, particularly, because you have the,et cetera, et cetera.

MR. WACHTELL: Sure. (Handing)

Read the question, please.

(Question read)

A Yes.

Q And would you tell me what Cantor, Fitzgerald has done to the best of your knowledge and information to fulfill that best efforts obligation?

A We have a margin account at the firm for D-Z.

Q Has Cantor, Fitzgerald done anything else to fulfill that obligation?

A We introduced Bruce Davis to another security's firm, where he entered into a margin account relationship.

Q When?

MR. KILL: When he entered it or when he was introduced?

MR. WACHTELL: When he introduced it.

A About June 14th.

Q What firm?

A Ladenburg Thalmann.

Q You said in your prior answer that he opened an account. Do you know, was it Mr. Davis' account, D-Z's account, Security's account or some other

entity's account, Security's account or some other entity's account?

A D-Z.

Q D-Z's?

A Yes.

Q What was the purpose for introducing Mr. Davis to Ladenburg Thalmann?

A The purpose was to obtain additional margin financing.

Q Was there any reason why such additional margin financing could not be supplied by Cantor, Fitzgerald?

A No.

Q Did Cantor, Fitzgerald as a matter of internal firm policy or otherwise prefer not to itself supply such additional margin financing?

MR. WILD: Objection to the form of the question.

MR. KILL: I join in the objection.

A Please read the question.

(Question read)

A Yes.

Q And would you tell me the reason or reasons underlying Cantor, Fitzgerald's preference

not to provide the additional margin financing itself?

A Our preference at that time was to provide another firm as a place to purchase additional shares rather than ourselves.

Q Why?

A We felt that at that time we had a sufficient margin loan.

Q Aside from any requirements imposed by law, does Cantor, Fitzgerald as a matter of internal policy have self-imposed limitations as to the dollar amount or percentage of margin loans that it normally makes?

MR. KILL: I object to the form of the question.

MR. WILD: I object.

A Not that I am aware of.

Q Does the firm have any policy to lend less than the maximum permitted by Regulation T?

MR. KILL: Objection to the form of the question.

A To the best of my understanding, the firm generally lends less than regulations permit.

Q Is there any particular percentage guideline which is utilized internally as a ceiling?

A To the best of my understanding, no.

Q Was there anything in particular in terms of percentage or dollar amount or any other factors which were considered in connection with the firm's decision that it did not wish itself to provide additional financing to B-Z?

MR. KILL: I object to the form of the question.

(Question read)

MR. WILD: I object to the form of the question.

A No.

Q What was the reason or reasons?

MR.KILL: I think he already answered that.

MR. WACHTELL: I have had a general answer that there was a preference, we felt that we had a sufficient margin loan.

I am trying to find out what the factors were which underlie the conclusion that the firm had a sufficient margin loan.

Q What was the factor that led to the change in this particular instance?

MR. KILL: I think this witness gave his best information and knowledge on the information.

MR. WACHTELL: That's what I am trying to find out.

Q Was it the dollar amount of the margin loan?

A No.

Q Was that a factor?

A No.

Q Was it the percentage of the margin loan to the quoted price of the security?

A It was our preference at that time.

Q What was the predicate for the preference?

* * *

Excerpts from Deposition of Lawrence F. Orbe, III

A To the best of my knowledge, it was our preference at that time.

Q Do you know or have any information with respect to any factor whatsoever which led to this preference?

A No.

Q Did you object to the decision?

A No.

Q Did you believe it to be an irrational decision?

A No.

Q What did you consider -- did you believe it to be a rational decision?

MR. WILD: Objection to the form of the question. Yes.

MR. KILL: I join in the objection.

A Did I believe it to be a rational decision? Yes.

Q What factors did you have in your mind which led you to conclude that it was rational for

Cantor, Fitzgerald to say "We don't want to lend any more margin money on this account?"

A That's not what they said. I said it was our preference.

Q What factors did you consider in your mind -- did you participate in the making of the decision?

A No.

Q Who made the decision?

A Mr. Miller.

Q Did Mr. Miller express to you any reason whatsoever for his preference not to lend additional margin?

A It was his preference.

Q Did he express to you any reason whatsoever, did you think it was a whim, did you think it was a mood, did you think he woke up on the wrong side of the bed, or did he indicate to you any reason he had for reaching that preference?

MR. KILL: I object to the form of the question, as to form.

Q Did Mr. Miller indicate to you any reason at that time for him having reached the preference not to extend additional margin loans on this account?

A No.

Q Have you ever been advised whether the Ladenburg Thalmann firm had determined not to make additional margin loans on this account?

A No.

Q Do you have any understanding as to whether the Ladenburg Thalmann firm has determined not to make additional margin loans on this account?

A No.

Q Is it your understanding that it is presently opened to D-Z to obtain additional margin loans from Ladenburg Thalmann in the purchase of shares of NJB one way or the other?

A I don't know.

Q At the time that Mr. Davis communicated to you the instructions to commence purchasing NJB shares for cash, did you discuss with him any reason for his switching to cash rather than the previous margin arrangements?

A No.

Q You didn't ask?

A No.

Q Did he say "No one will give me margin anymore" or words to that effect?

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A No.

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Q Directing your attention to this two-page document bearing date of March 21, 1974, which I think you have previously indicated was a letter of intent, I will accept the amendation, do you know whether the original or any counterpart copy of this document was executed by Mr. Davis?

A It is my understanding that it was.

Q To the best of your knowledge or information, has there ever been any amendment to this March 21, 1974 letter of intent?

A No.

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Q To the best of your knowledge or information, has there ever been any writing terminating or canceling this letter of intent?

A To the best of my knowledge, yes, it was.

Q When?

A April 12th.

(Continued on following page)

Q Was that terminated by writing?

A I know that it was terminated in a meeting. I do not know about the writing.

Q I do not have the date in my notes, you did mention it and I would appreciate your repeating it.

A April 12.

Q Who participated in that meeting, to your best knowledge?

A Myself, Davis, Bruce Matthews of CNA, Barry Silverstein.

Q Anybody else?

A Bill Miller, I believe, was in it.

Q Where was the meeting?

A In our offices.

Q Now, directing your attention to Exhibit 13 for identification.

Prior to that March 21, 1974 meeting from which this document evolved, had you discussed with Mr. Davis the concepts which are embodied in this document?

A No.

Q Had you discussed with him the concept of purchasing fifty-one percent of the stock of NJB Prime?

A In what context? In the context of that document or in the context of one of the alternatives that we had --

Q In the context of something that could well come out of a proposed joint venture with CNA?

A Yes.

Q Had you discussed with him the concept of attempting to get two-thirds of the outstanding shares?

A No.

Q And let me particularly direct your attention to page 2 of this document and the paragraph which reads or the sentence which reads as follows: "It is contemplated among other alternatives with no particular preference being given to this alternative that the tendering entity may attempt to gain voting control of two-thirds of the then outstanding shares of beneficial interest."

Now, to be sure we are clear, you had not at any time prior to March 21 discussed that concept with Mr. Davis, is that correct?

A That is correct.

Q The next sentence reads: "The purpose of this control will be to vote to change the status of NJB from a REIT to an ordinary operating corporation."

Did you ever discuss that concept with Mr. Davis prior to March 21?

A Yes.

Q And tell me what was said on that?

A This would relate back to my earlier testimony as to that Atlanta meeting, when we discussed the various options and alternatives open to one when you were looking at a REIT as an investment.

Q And what was said on the subject?

A It was mentioned as an alternative. That is the extent of it.

Q Subsequent to March 21, 1974, have you had discussion with Mr. Davis on the subject of the possibility of changing the status of NJB from a REIT to an ordinary operating corporation, if control of REIT should be achieved?

A Yes.

Q When?

A On different occasions.

Q Can you specify them for me, please?

A At the April 12 meeting.

Q When else?

A At our meeting on April 4.

Q When else?

A At a meeting sometime in the week of May 20.

Q What was that meeting?

MR. KILL: What do you mean what was that meeting?

Q Where was it, who was present?

A It was a meeting at Rubin, Wachtel.

Q Who was present?

A Messrs. Russel and Brainman of the Rubin, Wachtel firm, myself, Davis, Becker, and perhaps one other member of the Wachtel firm, I am not sure.

Q What was discussed on that occasion on this thought of changing the status of NJB from a REIT to an ordinary operating corporation?

MR. KILL: I think we are going into an area that involves attorney-client privilege, and I have been given no instructions by my client or anybody else that there has been any waiver of that privilege, and so I must.

* * *

Q Did you on any other occasions subsequent to March 21, discuss this concept of changing the status of NJB from a REIT to an ordinary operating corporation?

MR. KILL: Than the occasion he already --

Q Other than April 4, April 12, and May 20?

A No.

Q Have you ever discussed it since May 20, just so we can be sure we understand each other?

A No.

Q Do you have any knowledge or information that that concept has ever been abandoned?

A My best knowledge is that it remains a possible alternative.

Q Directing your attention to the next paragraph of Exhibit 13 for identification "Once this has been accomplished, it may be further desirable to have the tendering entity exchange its stock in NJB for stock in

Security Management Company which simultaneously would be merged into NJB.

"The result of this would be a transfer of the initial debt used in the tender offer to NJB."

Did you ever discuss that concept with Mr. Davis prior to March 21?

MR. KILL: Let the witness see the document, please.

MR. WACHTELL: Sure.

MR. KILL: Since you directed his attention to that paragraph.

MR. WILD: May I look over his shoulder?

A No.

Q Have you discussed it at any time since March 21?

A No.

Q Do you have any knowledge or information that that concept has ever been abandoned?

A No.

Q Did a time come when you became aware that D-Z was selling 50,000 unit notes to various persons?

MR. KILL: Repeat the question.

(Record read.)

A Yes.

Q Did you ever discuss with Mr. Davis how D-Z proposed to repay those notes?

A No.

Q Did you ever have any understanding as to how D-Z intended to repay those notes?

MR. KILL: I will object to the question as repetitious. He just said he had no discussion with Mr. Davis. How could he have an understanding without a discussion?

MR. WACHTELL: I would certainly hope that a sophisticated man such as Mr. Orbe would not have as sole fount of information, Mr. Davis.

Maybe Mr. Orbe knows something in this world that Mr. Davis hasn't told him. I think you may want to reconsider your objection.

MR. KILL: I will let the witness answer, I think my objection is proper. Proceed.

Q Have you ever had any understanding how D-Z proposed to repay these notes?

A No.

Q Did you ever ask?

MR. KILL: Again, I repeat my objection. The witness may answer. I think it is being repetitive.

A Did I ever ask what?

Q Did you ever seek to find out?

A No.

Q Now, you -- subsequent to March 21, what happened next with respect to this proposed joint venture between Mr. Davis' interests, and the CNA interests?

MR. KILL: You are referring to that particular document, Mr. Wachtell.

MR. WACHTELL: Yes, I am referring to the proposed joint venture which had its embodiment in Exhibit 13 for identification as at March 21.

A Davis came to New York for a meeting on April 4, at the offices of Skadden, Arps, and --

Q I would appreciate you not telling me what transpired at that meeting, as I previously indicated, I am doing my best to stay away from the subject of the disqualification motion.

A Subsequently on April 8, we were advised that Skadden, Arps had a conflict with CNA, and subsequent to that, there was an introductory meeting with the partners, a couple of partners of Rubin, Wachtel on the 11th, and then there was the meeting at which the preliminary understanding of CNA and Silverstein and Davis was terminated, which was the 12th .

The meeting in our offices in New York.

Q Now, at any time up to the present, do you have any knowledge or information of their having been prepared by Mr. Davis, Security, D-Z, or anyone acting on their behalf, any memorandum, outline or plan of what they were intending to do with respect to this takeover of a REIT?

A No.

Q Do you recall putting in an affidavit upon the disqualification motion involving Skadden, Arps?

A Yes.

* * *

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Q Mr. Orbe, I would like to direct your attention to this document that I have shown you off the record, during the recess, which is apparently an affidavit sworn to by you, dated June 3rd, 1974. Did you indeed sign and swear to that affidavit?

A Yes.

Q Did you read it before you did so?

A Yes.

Q Now, I have called your attention off the record to the sentence saying "Documents relating to the plans and thinking of Mr. Davis and his associates

were given to Mr. Becker."

I very specifically do not want to inquire of you what was given to Mr. Becker on that occasion. However, I call this language in your affidavit to your attention to see if it permits you to refresh your recollection as to knowledge and information that you had as to the existence of documents reflecting the plans and thinking of Mr. Davis and his associates in connection with this transaction, whether or not given to Mr. Davis?

A Yes.

Q It does?

A Yes.

Q Now, what documents have you now refreshed your recollection of that nature existed?

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Excerpts from Deposition of Lawrence F. Orbe, III

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Q Now, Orbe, I would like to put to you again a question I previously put to you at which time you answered that you did not recall the existence of certain documents.

Do you now recall the existence of any documents relating to the plans and thinking of Mr. Davis with respect to a takeover of a REIT?

A I recall a, I believe it was a two-page inter-office communication between Davis and Becker,

Saul Becker, which summarized Davis' views and understandings of his meeting with CNA, and gave a couple of explanatory remarks in connection with the Silverstein Davis memo.

Q Do you know of any other document of any description indicating Mr. Davis' understanding or plans or anybody else's at D-Z understanding or plans with respect to a takeover of a REIT?

A No.

Q Do you recall the date of that two-page memo?

A As I recall, it was dated sometime between March 21st and April 4th.

Q Is there a copy in the possession of Cantor, Fitzgerald at the present time?

A No, there isn't.

MR. WACHTELL: Mr. Wild, I call for the production of the memorandum in question from the plaintiff.

* * *

Excerpts from Deposition of Lawrence F. Orbe, III

Q Did you have any understanding of the purpose for which Mr. Davis wrote that memorandum to Mr. Becker?

A It was to explain the CNA memo, or the Silverstein Davis memo.

Q To whom?

A To Mr. Becker.

Q Did you have any understanding that when Mr. Davis sent that memo to Mr. Becker that it was intended to be given to anybody else?

A I don't know.

Q Do you have any knowledge that it was?

A I don't know.

* * *

Q Mr. Orbe, you testified that on April 12, a conference took place at the offices of Cantor, Fitzgerald between yourself and Mr. Davis, Mr. Matthews, Mr. Silverstein, and Mr. Miller, at which the March 21, 1974, letter of intent was terminated.

Had there been any meeting prior to April 12 with any representative of CNA?

A No.

Q Was there a meeting on April 10 in Chicago?

A That was moved to New York for the 12th.

Q The meeting that was originally scheduled between Mr. Cantor and a representative of CNA in Chicago became the April 12 meeting in New York, is that correct?

A Yes.

Q Would you tell me what transpired at that meeting?

A Mr. Matthews announced that CNA had problems of their own, and that they were not in a position to --

* * *

A Mr. Matthews announced that he had -- CNA had problems of their own, and they weren't sure who their new owners were going to be, and under those circumstances they could not consider a transaction of this magnitude or really any other transaction of any kind.

They were very sorry for taking up everybody's time, and case was closed.

Q What happened next with respect to any plans of Mr. Davis, Security or any of the other Mr. Davis' entities to acquire control of NJB?

MR. WILD: I object to the form of the question.

MR. KILL: I join in the objection.

MR. WACHTELL: I will stand on the question.

MR. WILD: If the witness understands.

MR. KILL: When you say next, I think we bounced around quite a bit.

Q The April 12 meeting. He had a deal, proposed deal with CNA --

MR. KILL: I understand that.

MR. WACHTELL: That is off. I want to know what happened next.

A Between April 12 and approximately May 22, Davis

and his people or Davis and Security Management were essentially waiting for the release of the 10-K of NJB Prime, proxy material, and current financial information; as well as possibly the stockholder list.

MR. WACHTELL: Can I have it read?

A Also, during that period of time, property inspections were being made as to those properties that they did know were still part of the portfolio of NJB Prime.

Q As at approximately May 22 of 1974, what was your understanding of what was then being contemplated by Mr. Davis with respect to NJB Prime?

MR. KILL: I will object to the form of the question. I think it is too broad and too general.

A Repeat the question.

(Record read.)

MR. KILL: If you can testify as to what Mr. Davis was contemplating?

A My understanding was that Mr. Davis had what he considered to be an attractive investment; and that pending the receipt and analysis of all of this information that I previously mentioned, various alternatives would then be considered.

Q Well, you have left me a little bit confused by your testimony. Perhaps I can seek to clarify.

You testified a moment ago that between April 12 and May 22, essentially nothing happened. And now you testified that as at May 22, Mr. Davis had what he thought to be an attractive investment. And would you tell me when this attrative investment suddenly -- had there been any attractive investment or otherwise on April 12?

MR. KILL: I object to the form of the question.

MR. WACHTELL: I will stand on the question.

MR. KILL: I don't think a witness can answer in his testimony, which characterizes his testimony in a manner I deem improper.

Q Did Mr. Davis have any investment in NJB Prime on or about April 12?

A No.

Q Did they on or about April 22?

A Yes.

Q Mr. Davis or his investments? Is it still your testimony that between April 12 and May 22, Mr. Davis was essentially waiting for a release of 10-K of this NJB Prime, and current financial information, and the stockholder list?

MR. KILL: And other materials.

Q And other materials?

A Yes.

Q Is it your contention that he didn't do anything significant during that period of time?

MR. KILL: That is not what he testified to. That is not the testimony at all.

MR. WACHTELL: I asked the witness what happened next after the 12th, his answer was, essentially waiting for the release of certain information.

Q Did anything else happen after April 12?

A D-Z commenced a program of accumulating shares of NJB Prime; on or about April 19.

Q Did you discuss that program with Mr. Davis or anybody else?

A Yes.

Q When?

A On April 12.

Q Tell me what was discussed at that time?

A In the afternoon, after the CNA meeting, we had a meeting, myself, Miller, Davis, and Becker, at which time Davis discussed the desirability from his point of view of a share accumulation program.

Q What was said?

A He pointed out that if previous conversations and discussions considered the possibilities of a tender offer a 10, 11, or 12, then surely the stock must be a good investment at five, six or seven.

Q What else was said at that meeting?

A And that given those set of facts, he would like to open an account and start buying shares.

Q Did he indicate how many shares he intended to buy?

A Initially?

Q At that meeting, on April 12, did he indicate how many shares he intended to buy?

A No.

Q At some subsequent date, did he indicate how many shares he intended to buy?

A Yes.

Q What was the subsequent date?

A April 18.

Q How many shares?

A The decision was made to become larger than a five percent stockholder.

Q How many shares was it intended to purchase as contemplated in April 18?

A Perhaps a hundred thousand.

Q Was the decision made not to purchase more than a hundred thousand?

A No.

Q Was there any discussion of purchasing 300,000?

A Upon the accumulation of a hundred thousand shares, wewould then review the matter.

Q That was what was discussed on April 18?

A Yes.

Q Was it discussed that the review would be made for the purpose of going to 300,000?

MR. KILL: That is your figure, Mr. Wachtell. I don't think that is the witness' figure. I may be wrong. I thought it was Mr. Wachtell's figure --

MR. WACHTELL: That is a figure I have suggested to the witness. I have not pulled it from thin air, it is based on previous testimony in this action.

Q Was there discussion of 300,000 or any other amount other than the 100,000?

A At what time?

Q April 18.

A No. At April 18, the discussion was essentially

that upon accumulation of approximately a hundred thousand shares we would then review the matter.

Q When was the matter next reviewed?

A The week of May 24, when the material was received.

Q And what was determined then as to the number of shares to be purchased?

MR. KILL: I will object to the form of the question. But you may answer.

A It was determined to purchase a minimum of another 100,000 shares.

Q Was there any determination of a maximum?

A No.

Q Was there any determination over how long a period of time such second hundred thousand shares should be purchased?

A No.

Q Have you ever heard a discussion of planning to purchase 300,000 shares?

A That specific number doesn't ring any recollection for me.

Q Have you heard a discussion of using 2,200,000 cash and margin to purchase shares of NJB?

A No. Not those specific numbers.

Q Have you ever heard any dollar amount

combined cash or margin being contemplated to be used to purchase shares of NJB?

A Only insofar as it related to various alternatives.

Q Tell me what was discussed.

A For example, if an alternative would have eventually been agreed to as a course of action, there would be X dollars required for, say, 51 percent.

Q When was that discussed?

A During that April 24 -- May 24 week.

Q What other alternatives were discussed at that time?

A The funds required to acquire 20 percent.

Q Which would be approximately $250,000, is that correct?

A $260,000, something like that.

Q What was discussed on that subject?

A It was mentioned as another alternative.

Q What was said on how the funds would be required or how they would be obtained?

A There was no discussion as to how it would be obtained. It was what the total dollars would be required.

Q With respect to the potentiality of going

Excerpts from Deposition of Lawrence F. Orbe, III

to 51 percent, which you say was discussed during the week of May 24, was there any discussion of how that would be financed?

A No.

* * *

Q Now, you have testified that on or about April 19, D-Z commenced a program of accumulating shares of NJB Prime. And you have testified that on April 12, there was a discussion that Mr. Davis said he

wanted to acquire shares. On or about April 12 or about April 19, did you have any discussion with Mr. Davis as to how such shares would be financed, what source of funds would be utilized?

A No.

Q When did you become aware of the formation of D-Z?

A About April 25.

Q How?

A Mr. Davis requested that the brokerage account be changed from a Security Management to D-Z.

Q Did you have a discussion with him on the subject?

A No.

Q Did you ask who was D-Z?

A He identified it as an affiliate of Security Management.

Q Did you ask for anything further?

A I believe our margin department asked for the appropriate corporate documents and resolutions; I was not party to those conversations.

Q With due regard to the know-your-customer rule, did you seek to get any information with respect to this new customer D-Z?

MR. KILL: You are talking about Mr. Orbe personally?

Q Or anybody else in connection with Cantor, Fitzgerald?

A No.

Q No?

A No.

Q Mr. Davis told you that there was D-Z, it was an affiliate of Security, and you didn't seek to find out anything further nor do you know if anybody else at Cantor, Fitzgerald sought to find out anything further about D-Z, is that correct?

A That is correct.

Q I show you Defendant Trustee's Exhibit 5 for identification.

And I am going to show you a marked up copy, which is my own one, and I am going to ask you to ignore the blue-inked notations.

Have you ever seen the original or any other copy of this document before?

A I don't recall ever seeing this.

Q Now, you have testified that you did something with Exhibit 7, I hate to characterize your testimony, which is the 13(d) --

MR. WILD: Glanced at it.

Q Thank you.

When you glanced at it, did you note that D-Z was selling, I think you indicated previously that you did, perhaps I am being repetitious, you did note that D-Z was selling $50,000 unit promissory notes to certain persons?

A I said that is how I found out when I saw that.

Q You didn't know that before seeing the document?

A That is correct.

Q Did you then have any discussion with Mr. Davis or anybody else as to the basis upon which such notes were being sold?

A No.

Q Did you ever have any discussion as to how many notes were contemplated to be sold?

A No.

Q Did you have any discussion as to the basis upon which such notes would be repaid?

A No.

Q Did you seek to ascertain whether the sale of the notes was lawful?

A No.

Q When you said that you have never seen Exhibit 5 for identification, which is this memorandum, just to be on the safe side, have you ever seen any draft thereof?

A I don't recall seeing that before.

Q Or any draft?

A That is right.

Q At or about April 24 of 1974, were you aware that D-Z was planning to and had authorized the sale of $1,250,000 of six percent promissory notes due March of 1975, and callable previously?

MR. KILL: Objection to the form of the question.

MR. WILD: I object.

Q To be sure we have no misunderstanding if you left out -- let me phrase the question in another way to be sure we are both saying the same thing.

I direct your attention to Exhibit 7 for identification, the 13(d), to the schedule of notes being sold to certain noteholders, which is Schedule B thereto, I believe, and that refers to a sale of certain six percent promissory notes referred to in Item 3, is that correct?

MR. KILL: The document speaks for itself.

Q And you saw that when you glanced at the document?

A Yes.

Q Were you aware at that time that D-Z had authorized and was planning to sell $1,250,000 of such notes?

MR. KILL: Objection to the form of the question.

A No, I didn't.

Q Were you aware that D-Z was planning to sell such notes to 25 separate purchasers?

MR. KILL: Objection to the form of the question.

A I was not aware.

Q Were you aware that D-Z was planning to solicit such persons until it secured 25 purchasers of such notes?

MR. KILL: Objection to the form of the question.

A I was not aware.

Q Were you aware that D-Z had determined and was intending to issue prior to September of 1974 a new series of securities to consist of $50,000 units comprising a $45,000 two-year promissory note and four

shares of common stock?

MR. KILL: Objection to the form of the question.

A No, I was not aware.

Q Were you aware of any plans of D-Z to issue any new securities other than these six percent promissory notes due March of 1975?

A No.

MR. KILL: Objection to the form of the question.

Q Were you aware that the shares of Messrs. Davis -- were aware that Security was a fifty percent shareholder of D-Z, and Mr. Zimmerman was a 50 percent shareholder of D-Z?

MR. KILL: Objection to the form of the question.

A At what time? At this time?

Q At the time that you read the 13(d)?

A No, I was not.

Q Did you see it in the 13(d)?

MR. WILD: The question is did you see it in the 13(d), not is it --

MR. KILL: "It is" instead of "is it."

Q Did you see it in the 13(d)?

MR. KILL: At the time you reviewed it or glanced at it?

THE WITNESS: No.

Q Let me direct your attention to the very first page of the body of the 13(d), Item 2, the voting stock of D-Z is owned in equal shares by Jerome Zimmerman and by Security Management Company, Inc.

Does that refresh your recollection?

A I don't remember seeing it when I glanced at it.

Q Have you ever met Mr. Zimmerman?

A I think once.

Q When?

A May.

Q Where?

A Rubin, Wachtel.

Q Who else was present?

A That was that meeting that we referred to earlier, the week of May 20.

Q Were you aware at that time that Mr. Zimmerman was a fifty percent shareholder of D-Z?

A At that time I was, yes.

Q Had you been aware of it at any time prior to that time?

A No.

Q Have you ever been aware up to this moment that the voting stock of D-Z owned by Security and Mr. Zimmerman has been placed in escrow as security for repayment of the six percent promissory notes.

MR. KILL: Objection to the form of the question.

A Repeat the question.

(Record read.)

A No.

Q I am not sure I asked you this before: Did you remember or did Cantor, Fitzgerald recommend Mr. Davis to Rubin, Wachtel?

A Yes.

Q Did you ever promise Mr. Davis that Cantor, Fitzgerald would provide fifty percent margin financing for Mr. Davis or Security's or D-Z's purchases of NJB Prime?

MR. KILL: Objection to the form of the question. Would you read back the question?

(Record read.)

A No.

Q Did you ever say to Mr. Davis in words or substance, that Cantor, Fitzgerald would use its best

efforts to do so?

A Yes.

Q Now, what was your understanding of the services that were to be rendered by Cantor, Fitzgerald to Security or Security's assignee pursuant to the April 25, 1974 letter agreement?

MR. WILD: Repeat the question, please.

(Record read.)

A We would provide general financial advice and assistance with respect to analyzing portfolio of NJB Prime, and possibly other REITS.

We were assisting him wherever possible in obtaining margin financing for the purchases of shares.

We would in fact purchase shares on his behalf under his instructions. And we would act as overall financial advisor in the ongoing program of evaluating the alternatives pursuant to the expansion of the business of Security Management.

Q Anything else?

A No.

Q Directing your attention to Exhibit 7 for identification, which is before you, which is the 13(d) produced from the files of Cantor, Fitzgerald, did you read Item 3 when you looked at that document, source,

amount of funds, and other consideration Item 3 on page 2 ?

A I remember glancing at it.

Q And it is correct then that you were aware when you glanced at it, that that part of the purchase cost for the NJB shares that had been purchased which was not being provided by a margin borrowing from Cantor, Fitzgerald had been provided from the borrowing under the six percent notes, is that correct?

MR. KILL: I object to the form of the question.

Do you understand the question?

A I understand the question. I didn't make that reference; that analogy.

Q Did you understand the language you read?

MR. KILL: He testified he glanced at it, and he answered your prior question. I think it is improper to ask him whether he understood what he read.

MR. WACHTELL: I think it is proper to probe.

Q Did you understand what you read when you glanced at that?

A Yes.

Q And it says that approximately $468,383

has been expended by D-Z, did you read that?

A Yes.

Q It says "$254,733 thereof was paid out of D-Z's own funds, which funds were obtained by D-Z in a private placement of its six percent promissory notes due March 31, 1975, which notes were sold to the persons and in the amounts set forth the Schedule B here to annexed," did you read that?

A I recall the first part of it; which is approximately $260,000, there was paid out of D-Z's own funds.

Q Did your eyes stop with the next words, "which funds were obtained by D-Z in a private placement of six percent promissory notes"?

MR. KILL: I object to the form of the question as repetitious. The witness read the thing. He glanced at the document. He is giving you the best recollection of events that occurred some time ago. I think it is improper to pursue this line of questioning.

Q Mr. Witness, you previously testified that you did look at Schedule B which had the list of noteholders, is that correct?

A Yes.

Excerpts from Deposition of Lawrence F. Orbe, III

Q Did you understand that D-Z had derived its funds from the noteholders?

A As I glanced through that document, my best recollection of what I thought through at the time was

that D-Z had obtained funds from different sources; and I can't focus on what those sources were.

Q Is there anything in this document which indicates any source of funds whatsoever to D-Z other than the noteholders, and the margin loan from Cantor, Fitzgerald.

MR. KILL: The document speaks for itself. Do you want him to review it now?

A I don't recall.

Q Do you recall having seen anything in this document at the time you looked at it, perhaps it was in vanishing ink, Mr. Kill, which would have indicated any source of funds to D-Z other than the noteholder's money, and the Cantor, Fitzgerald margin loan?

MR. KILL: I will object to the form of the question.

MR. WILD: I join in the objection.

A I don't recall.

Q Now, did anybody else at Cantor, Fitzgerald to your knowledge ever look at this 15(d)?

* * *

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Q Did anybody else to your knowledge or information at Cantor, Fitzgerald ever see this 13(d)?

A I believe/Miller/ read it also, or however he looked at it.

Q At or about the time it came in?

A Yes.

Q When did it come in -- I will rephrase it.

Did it come in to Cantor, Fitzgerald at or about the time that it was prepared and filed with the SEC?

A I believe so.

Q With respect to Exhibit 8 for identification, the amendment No. 2, did this come in to Cantor, Fitzgerald at or about the time it was filed with the SEC?

A I don't know, this is the first I have seen of this.

Q You say you have never seen that Exhibit No. 2 before today?

A That is correct.

MR. WILD: Amendment No. 2. Excuse me, amendment No. 2. You have never seen that document before today, to your best recollection?

THE WITNESS: Right.

Q Do you know if Mr. Miller has or anybody else at Cantor, Fitzgerald?

A I don't know.

Q I show you Defendant Trustee's Exhibit 9 for identification, which is Amendment No. 3, and ask you whether you have ever seen that document before today?

A No, I haven't seen this before, either.

Q Do you know whether Mr. Miller has?

A I don't know.

Q Does Cantor, Fitzgerald, to your knowledge, or information have in its possession a copy of Amendment No. 1, which I guess would be Exhibit seven and a half, if we ever get it?

A I don't know. I don't have it.

MR. KILL: Let me comment on that. You will get what we have. If we don't have it, we don't have it.

Q Do you recall seeing Amendment No. 1 on the 13(d)?

A No.

Q I would like to direct your attention to Exhibit 11, which is a copy of the list of holders of NJB Prime. When did that document come into the possession of Cantor, Fitzgerald?

A Friday, May 17.

Q For what purpose?

A Information.

Q Were you supposed to do anything with it?

A No.

Q What information did you understand you were getting it for?

A We really had no instruction at that time.

Q Who did you get it from?

A It came from Rubin, Wachtel, I believe.

Q Have you subsequently ever received any instructions whatsoever with respect to that stockholder list from anybody?

A No.

Q Does there exist in the possession, custody or control of Cantor, Fitzgerald any other copy of such list or any part thereof?

A I don't know.

Q Or any, including by part, any other memorandum or list prepared from the information existing or Exhibit 11, as for example, list of everybody holding more than X number of shares?

A I believe that there is such a list.

Q Would you describe the list you believe does exist?

A I believe that there is a summarized list that was typed by someone in our office, listing holders from one -- holders that have at least one thousand, but not more than 9,999 shares, and then a supplemental list of shareholders of 10,000 or more.

Q Who instructed such a list to be prepared?

A I --

Q Lists to be prepared?

A I think Mr. Miller.

* * *

Q Did you discuss with Mr. Miller the preparation of such summarized lists?

A No.

Q Do you have any knowledge or information as to whether Mr. Miller received any instructions from anybody to prepare such a summarized list?

A No.

Q Do you have any knowledge or information whether anybody in or out of Cantor, Fitzgerald ever did anything with any such summarized list?

A No.

Q When was such summarized list prepared?

A I would be guessing.

Q Your best approximate recollection, if you have any.

A The week of June 3.

Q To your best recollection, in attempting to fix the date, I would ask you to fix it for me now with reference to the June 13 stockholders' meeting of NJB, I think it was June 13, were the summarized lists prepared, to your knowledge, before or after June 13?

A I think before, but I am not sure.

Q Was anybody given a copy or copies of such summarized lists?

A As far as I know, no.

Q Was any copy given to -- perhaps this is repetitious, but I want to be sure, was any copy given to D-Z or anybody representing D-Z?

A I don't know.

Q One way or the other?

A I don't know.

Q Does that mean one way or the other?

A Yes.

Q To Rubin, Wachtel?

A I don't know.

Q To any solicitation firm?

A I don't know.

Q To your knowledge, or information, has D-Z or Rubin, Wachtel acting on behalf of D-Z or your firm or anybody else acting on behalf of D-Z, ever have communications with any proxy solicitation firm in connection with NJB Prime?

A To my knowledge, yes.

Q What firm?

A Georgeson & Company.

Q Who communicated with them?

A Mr. Davis.

Q When?

A I don't know.

Q Before or after June 13?

A I don't know.

Q Do you have any recollection?

A No.

Q What is the basis for your understanding that Mr. Davis communicated with Georgeson?

A I believe he called them once from our office to ask them some questions.

Q With whom did he speak at Georgeson to your knowledge or information?

A I don't know.

Q Tell me what you heard from his side of the conversation?

A He asked about fees and expenses.

Q What services was he asking them to render or was he asking them to quote upon, so to speak?

MR. KILL: Objection to the form of the question.

Q What did he say, what did he say he was calling them about, what did he say he was interested in having to do, or what they were willing to do or what they would charge for it, tell me everything that you heard from his side of the conversation?

MR. KILL: I object to the form of the question.

A My recollection is that he asked them what it would cost to mail approved proxy materials to the stockholders of NJB Prime.

Q Do you recall anything else?

A The supplemental cost of the second mailing.

Q When you say approved proxy materials, did you understand him to be speaking of proxy materials with respect to the June 13 annual meeting of shareholders?

MR. KILL: I will object to the form of the question.

A No.

Q Did you understand him to be referring to proxy materials for a special meeting?

A Yes.

Q Does that refresh your recollection as to when this conversation took place with respect to June 13?

A No.

Q Did he indicate the nature of the proxy materials?

A No.

Q Did you understand at the time in order for a special meeting of shareholders to be called, the consent of 20 percent of the stock would be required?

A Yes.

MR. KILL: I object to that.

Q Did you discuss that with Mr. Davis?

A When?

Q At any time?

A Yes, I testified earlier that I did.

Q I don't believe so. Tell me what conversation you had with Mr. Davis as to a twenty percent requirement for calling a special meeting.

A I believe I testified earlier about it, Mr. Wachtell; yesterday, when we were, I think we were in Atlanta, at one of our sessions, and we discussed the various alternatives, one faced in an investment program in any REIT.

Q Mr. Orbe, you are talking now about a discussion with Mr. Davis fairly early in the game, is that correct?

A Yes.

Q Now, coming down to the period after this stockholder list is obtained either prior to the June 13 meeting or since that time, did you have any further

conversation with Mr. Davis on the question of getting 20 percent consent to call a special meeting?

A Yes.

Q What was discussed?

A We discussed the advisability or desirability or lack thereof of owning a minimum of 20 percent of NJB Prime to be in a position to elect the alternative of calling for a special meeting.

Q Was anything else discussed on the subject of the 20 percent requirement or getting 20 percent consents?

A No.

Q Was there any discussion of whether or not to seek consents from other shareholders to come up with the 20 percent?

A No.

Q Have you ever had any such discussion with Mr. Davis?

A No.

Q Do you have any knowledge or information whether anybody acting on behalf of D-Z has ever directly or indirectly contacted any shareholder of NJB Prime for the purpose of requesting such a consent?

MR. KILL: Read back the question.

(Record read.)

A No.

Q Do you know whether Georgeson & Company or any other proxy solicitation firm has ever been retained by D-Z directly or indirectly?

A I believe Georgeson was retained.

Q When?

A I am not sure.

Q Before or just since June 13?

A I don't know.

Q Are copies of any communications between Mr. Davis, and D-Z, and Georgeson in the possession, custody or control of Cantor, Fitzgerald?

A No.

Q Do you know whether the retainer is in writing?

A I don't know.

* * *

Q Do you have any knowledge or information as to whether at the present time, D-Z is intending to solicit now or in the future other shareholders of NJB for consents to call a special meeting?

MR. KILL: Objection to the form of the question. Do you understand the question, first of all?

A Yes, the answer is no.

Q Do you have any knowledge or information as to whether at the present time D-Z is intending itself to acquire a 20-percent of the stock so as to be in a position itself to call a special meeting?

MR. KILL: Objection to the form of the question.

A Repeat it.

(Record read.)

A Yes.

Q What knowledge or information did you have on that subject?

A My understanding is that D-Z is desirous of acquiring up to at least 20 percent of the shares of NJB Prime in order to be in a position to exercise that alternative if it so chooses.

Q What is the basis of your understanding that D-Z is desirous of doing this?

A Conversation with Bruce Davis.

Q And when did you have such conversation or conversations in which Mr. Davis indicated to you that that was his intent?

MR. KILL: No, that is not what the witness testified to. Merely testified that D-Z

was desirous of acquiring up to twenty percent to be in a position to call a special meeting. Which is quite different than your characterization of the testimony.

MR. WACHTELL: Mr. Kill, I am afraid you are misinterpreting my statement. I was not asking the witness whether Mr. Davis told him it was the intent to call a special meeting.

My question is, whether and perhaps I didn't artfully phrase it, when Mr. Davis indicated to him this intent to acquire the 20 percent, on what occasion or occasions.

I appreciate that there was an ambiguity. I will clarify it for the witness when he gets off the telephone.

Q Mr. Orbe, the open question that we were in the process of clarifying was the occasions upon which Mr. Davis expressed to you this intent to purchase 20 percent of stock so that D-Z would be in a position to call a special meeting if it so desired.

A We discussed it on Wednesday, June 26.

Q Where?

A In my office.

Q Who else was present?

A Davis, myself and Miller.

Q Did you take any notes?

A No.

Q Do you know of any document of whatsoever description that would reflect in whole or in part what was discussed?

A No.

Q What was said?

MR. KILL: In the document or at the meeting?

Q At the meeting. I can't ask him what was said in the non-existent document, Mr. Kill.

MR. KILL: I may be getting tired.

A I was on my way to Europe, from the 27th to the 8th, and Mr. DAvis just reaffirmed his desire to obtain a minimum of 20 percent of the shares.

Q You say that he reaffirmed his desire, on what previous occasion or occasions had he expressed that desire?

A June 15th.

Q Where?

A In our offices.

Q Who was present?

A Davis, Becker, Miller, Orbe, Russell, Steve Marshall, Brainin.

Q And what did Mr. Davis say on that occasion?

MR. WILD: I object on the ground that it is privileged.

MR. KILL: I join in that objection.

MR. WACHTELL: I don't think it is privileged. Mr. Miller and Mr. Orbe --

Q Are you an attorney, Mr. Orbe?

A No.

Q Is Mr. Miller an attorney?

A I think he is.

Q Does he practice law?

A No.

Q Was Mr. Miller acting on that occasion as an attorney, to your knowledge, or information?

A No, but can I just confer with my counsel for a second?

MR. WACHTELL: Sure.

(Discussion off the record)

A At that meeting, as Cantor, Fitzgerald we asked specific legal advice of Rubin Wachtel.

Q As to the legality of anything?

MR. KILL: I think the witness has testified

that he sought legal advice. I think --

MR. WACHTELL: I am asking for the subject matter.

MR. KILL: I think you have already --

Q What was the subject matter as to which Cantor, Fitzgerald sought legal advice?

MR. KILL: You can answer the question without disclosing the communication at the meeting, and I will give you the opportunity of doing so.

A There were four subject matters --

MR. WILD: It will be over my objection.

A Four subject matters.

Q What were they?

A Disclose your arrangements with respect to ownership of 20 percent; disclose your arrangements with respect to the purchase of shares of NJB Prime for the account of D-Z by another broker.

Clarification of the proxy rules, and questions concerning proxy materials.

Q Now, you say that these are questions upon which Cantor, Fitzgerald addressed inquiries to Rubin Wachtel for legal advice to Cantor, Fitzgerald, is that correct?

A Yes.

Q And there were a lot of gentlemen from D-Z sitting there when this request was made, is that correct?

MR. KILL: Objection to the form of the question.

Q Was this done in the presence of people other than Cantor, Fitzgerald and attorneys from Rubin Wachtel?

A I don't think so. I think Becker and Davis had either left the room or was on the telephone conference.

Q When you say disclosure requirement with respect to ownership of 20 percent; I am just seeking to clarify without telling me what the advice was, was that with respect to once 20 percent was acquired as distinguished from an intent to acquire 20 percent?

MR. WILD: Objection.

MR. KILL: Objection. I direct the witness not to answer. I assert the privilege.

MR. WACHTELL: I don't think there is a privilege.

MR. KILL: I do.

* * *

Q At any time, other than June 13th, did Mr. Davis express in your presence this desire and intent to obtain a minimum of 20 percent of the shares of NJB?

MR. KILL: Repeat the question.

(Question read)

A No.

Q Now, getting back to the June 26th meeting, between yourself, Mr. Davis, and Mr. Miller, what else was discussed?

A I would like to point out that it was Mr. Davis' desire, not intent, and secondly, at that meeting, we gave Mr. Davis no assurance whatsoever that a position of that size could be obtained.

Q You say it was a desire and not his intent. Did he express a contrary intent. Did he say he did not want to get 20 percent?

A No.

Q He said he wanted to get it, is that correct?

A He said he would like to.

Q He would like to?

A Yes, and we gave him very little assurance.

Q And he gave you instructions to purchase whatever came down the pike for cash, as much as you could, as you previously described, is that correct?

MR. KILL: Objection to the form of the question.

Q Is it at that time that Mr. Davis gave to you the instructions that you described this morning with respect to authorization to purchase shares for cash?

A Yes.

Q In an unlimited amount, is that correct?

A Yes.

Q Now, what else was discussed at that June 26th meeting?

A A lot of matters not related to this.

Q Not related to NJB?

A Right.

Q Was anything whatsoever said at that time about the proxy rules?

A No.

Q Preparation of proxy materials?

A No.

Q Possibility of soliciting consents to a shareholder's meeting?

A No.

Q Anything whatsoever having to do with B-Z?

A No.

Q Anything having to do with any attempt to take over any other REIT"

A Yes.

MR. WILD: Objection.

Q What was said on that subject?

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Q What was said on that subject?

A Mr. Davis had selected a second target and discussed

with us the program of accumulating shares in the second one.

Q Was this being discussed as an alternative to NJB or as an additional victim or --

MR. WILD: Objection.

MR. KILL: I join in that objection.

MR. WACHTELL: I strike victim, and substitute target.

MR. KILL: Rephrase the question.

Q Was this being discussed as an alternative to NJB or as an additional target?

A Additional.

Q And what was discussed on the subject of acquisition of shares in this second REIT?

A The discussion centered on an analysis of the trading acitivity of that particular security, price, and what an accumulation program might eventually -- what size you might eventually obtain.

Q Has D-Z embarked upon such an accumulation program?

A No.

Q Was there any discussion with respect to that second target company as to what role, if any, Cantor, Fitzgerald would play in the endeavor?

A Yes.

Q What was discussed?

MR. WILD: May I have a continuing objection to the line so I don't have to interrupt?

MR. WACHTELL: Certainly.

MR. KILL: And the same with me.

MR. WACHTELL: Sure.

A We discussed our function as purchasing the shares for the account of D-Z.

Q What was said?

A That we would be pleased to do it.

Q Was anything said as to financing?

A No.

Q Was anything discussed as to whether the purchases would be for cash or on margin?

A No.

Q Did you have any understanding as to how the shares would be purchased?

A No.

Q Did you ask?

A No. This was a very preliminary conversation.

(Continued on following page)

Q Did Mr. Davis indicate that he had financial wherewithal to purchase shares of this second REIT?

A It wasn't discussed.

Q Was any discussion had as to the financial basis upon which Cantor, Fitzgerald would be prepared to act?

A No.

Q Was it going to get an additional retainer?

A We discussed it, and there was no conclusion.

Q What was said?

A We discussed the possibility that there might be an additional retainer.

Q Was any dollar amount discussed?

A No.

Q What did Mr. Davis say?

A He said think about it, and we will talk about it again.

Q Is it your understanding that Cantor, Fitzgerald has taken on D-Z and/or Security and/or Mr. Davis as an investment banking client?

MR. WILD: Objection to the form of the question.

MR. KILL: Objection to the form of the question.

A My understanding is pursuant to that letter, which is attached to 13(d).

Q You testified yesterday --

MR. WILD: Allow the witness to complete the answer.

THE WITNESS: I did.

MR. WACHTELL: The witness indicated, Mr. Wild, that he had.

MR. WILD: I apologize in that case.

Q You testified yesterday that you were having certain conversations with Mr. Davis, and you said as of that point, we hadn't decided to take them on as investment banking clients, etc., etc., and I am trying to get your understanding.

Did a point in time come when you understood that Cantor, Fitzgerald had decided to take on Mr. Davis or Security or D-Z as an investment banking client?

A March 22.

MR. KILL: I object to the form.

Q That was the date of the first agreement that was subsequently superceded?

A Yes.

Q And is it your understanding that Cantor,

Fitzgerald has been acting as investment banker to Security and D-Z since?

A Yes.

Q Now, was there anything else that was discussed at June 26th meeting that you recall?

A No.

Q Directing your attention to Defendant Trustees' Exhibit 7 for identification, which is the original Schedule 13 (d), it indicates a purchase of 60,000 shares of NJB stock on April 2nd, in an off the market transaction; are you familiar with that transaction?

MR. WILD: I object to the form of the question.

MR. KILL: I join in that objection.

A Yes.

Q And from whom were those shares purchased?

A Another REIT, known as Realty Income Fund.

Q And how did that transaction come about?

A Our institutional department contacted the trading desk of that institution. And asked them if they had any interest in selling, and they said yes, stated a price, and we reflected it to our customer. He agreed, and we purchased the shares.

Q Now, at any time prior to or since that date, has Cantor, Fitzgerald sought to solicit from any holder of a block of shares of NJB the sale to Cantor, Fitzgerald's customer of such block or any part thereof?

MR. KILL: Objection to the form of the question. Would you read it back, please.

(quesstion read back)

A Yes.

Q My question literally would exclude April 23rd itself, and that I ask you for any blocks prior to or since. Were there any other blocks solicited on April 23rd, other than the 60,000 shares that was actually purchased?

A On that specific day, I don't know.

Q Well, in any event, can I assume that your yes would pick up April 23rd, if any other block was indeed solicited on that date?

MR. WILD: I object.

Q That's inartful, I will try again.

I am now asking you to tell me what other blocks were solicited, please include at any other date prior to April 23rd, on April 23rd, or since April 23rd.

A Okay. The Vickers Guide, which we referred

to earlier in our testimony, which is public information, as to institutional holders, principally mutual funds of publicly traded securities, listed six stockholders of NJB Prime.

It was determined that two of those had already sold their shares, and one of the remaining four was CNA.

So there were three remaining, and those three people were contacted, one of which was the 60,000 shares.

Q How was it determined that two had been sold?

A By calling them.

Q In an endeavor to solicit the purchase of their blocks?

A Correct.

MR. XILL: Objection to the form of the question.

Q And who were those two?

A S.G. Securities, which was a real estate investment trust that held shares of other real estate investments controlled by someone in Sonnenblick-Goldman, and some other small mutual fund that I don't recall.

Q What were the three that were solicited?

MR. KILL: Objection to the form of the question.

A The Realty Income Fund that I mentioned earlier.

Q I am sorry, I am confused now. You say you mentioned Realty Income Fund earlier, in what context?

A As one of the three that were contacted.

MR. KILL: On April 23rd, the 60,000.

A Whenever they were.

Q Oh, let me construct, I think I understand what you are saying. There were six altogether, one was CNA, that brought it down to five?

A Two sold.

Q No attempt was made to communicate with CNA?

A That's correct.

Q So there were five blockholders that were solicited. Two turned out already to have sold their blocks?

A Yes.

Q One Realty Income sold the 60,000 shares to your client. What were the other two?

MR. KILL: Objection to the form of the question.

A One I believe was a mutual fund controlled by Drexel Burnham, and the other was a small mutual fund in the midwest.

Q And what was the result of such solicitations?

MR. KILL: Objection to the form of the question.

A The one sale.

Q What was the result of the solicitation to the two that you have --

A No sale.

MR. WILD: Objection to the form of the question.

MR. KILL: Can we have a continuing objection to this line of questioning, of the use of the word solicit, and in general, so we can expedite the examination.

MR. WACHTELL: Be my guest.

MR. KILL: Thank you.

Q Have they been solicited again?

MR. KILL: "They" being the two.

MR. WACHTELL: The two that did not sell at that time.

A One of them contacted us, and subsequently resulted in a sale.

Q When was that?

A The week of July 1st.

Q How many shares?

A I am not sure. I think it was 5200.

Q Was that the total block?

A Yes.

Q Which one was that?

A Drexel.

Q Has the other been communicated with again?

A No, to the best of my knowledge.

MR. WACHTELL: I would like to call for --

Q Were all of these communications done by your institutional trading desk or department as you described it?

A I believe so.

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Q Now, other than the attempt to put Mr. Davis together with CNA, and other than the various margin financing that you have testified to, to wit, that Cantor, Fitzgerald introduced Mr. Davis to Ladenburg Thalmann, has Cantor, Fitzgerald to your knowledge or information made any effort whatsoever to raise financing or communicate with any person, corporation or other entity with respect to the potentiality of providing financing to D-Z, Mr. Davis or Security?

MR. KILL: I object to the form of the question.

MR. WILD: Objection.

MR. WACHTELL: I stand on it.

MR. KILL: I think the witness' testimony speaks for itself. Your attempted summary appears to me to be incomplete.

MR. WACHTELL: It isn't a summary, it is a desire to avoid repetition by excepting from the question areas that have been previously covered. I don't wish him to again tell me that he --

Q Have there been any other efforts, direct or indirect by Cantor, Fitzgerald to supply financing, provide financing, ascertain the possibility of a source of financing to Security, Mr. Davis or D-Z?

MR. KILL: I will object to the form of the question.

A I believe that Mr. Miller might have contacted one or two banks.

Q When?

A I don't know.

Q Can you give me your best recollection or approximation?

A No.

Q What is the basis of your belief?

A I seem to recall a conversation where Miller was introducing Davis to a bank. I don't have any specifics.

Q Was this after the CNA transaction fell through?

A Yes.

Q Was it before or after D-Z was formed?

A After.

Q Was it before or after D-Z embarked upon cash purchases as distinguished from margin purchases?

MR. KILL: Objection to the form of the question.

A I don't know.

Q What bank?

A Sterling National Bank, I think.

Q Do you know whether anything came of that introduction?

A No.

Q Do you know whether the matter is still pending fire or hanging fire?

A I don't know.

Q It may be?

A It may be.

MR. WACHTELL: I call for the production of any documents in the possession, custody or control of Cantor, Fitzgerald with reference generally to any attempts to procure or arrange financing for Mr. Davis, Security or D-Z, specifically Sterling National Bank or any other bank.

Q Mr. Orbe, other than that, do you know of any other attempt to arrange or procure or potentially procure financing for D-Z, Davis or Security?

A No.

MR. KILL: Objection to the form of the question.

Q Is there a Mr. Schwartz in the employ of Cantor, Fitzgerald?

A Yes.

Q What is his full name?

A William Schwartz.

Q What is the nature of his employment, what does he do?

A He is principally involved in the specialized trading of warrants of convertible securities, he maintains over-the-counter markets in special situations.

Q In the New York office?

A Yes.

Q Have you ever had any discussion with Mr. Schwartz with respect to NJB Prime?

A Yes.

Q Can you tell me all such discussions?

A On April 12th, at the previously testified to meeting with the CNA people, Mr. Schwartz came by and said hello to Mr. Silverstein, because he had previously known him, in fact, Mr. Schwartz had introduced me to him on the telephone.

And I think I introduced Davis to Mr. Schwartz at that time.

I think we discussed -- about June 14th, we discussed in a very general way, the summary shareholder list we referred to earlier.

Q Who is "We?"

A Schwartz and myself.

Q Anyone else present?

A I believe Mr. Miller was.

Q What was said?

MR. WILD: I am going to object. The witness was asked a question sometime ago to set forth all the discussions between himself and Mr. Schwartz regarding NJB Prime. And that was a question that asked him to enumerate each

of these conversations, and I would like him to be allowed to complete his entire answer to that question, before he is interrupted with other questions.

Q Okay. You told me about a discussion on April 12th or what happened on April 12th. You told me there was a discussion on June 14th, which you described in a very general way. Have you ever had any other conversations with Mr. Schwartz on the subject of NJB?

MR. KILL: Objection to the form of the question.

A On the 16th of June, also.

Q Who was present?

A Mr. Schwartz and I.

Q Any other time?

A Not that I recall.

Q Do you have any knowledge or information as to whether Mr. Miller has had any conversation with Mr. Schwartz with respect to NJB on any occasion?

A I believe they have, but I am not sure.

Q What is the basis for your belief?

A I don't know.

Q Do you know whether Mr. Davis has had any

communication with Mr. Schwartz?

A I don't believe so.

Q Directing your attention to the meeting that you have testified took place approximately on June 14th between Mr. Schwartz, Mr. Miller, and yourself with respect to the summary shareholder lists that you have previously referred to. Tell me what was said?

A Mr. Miller gave Mr. Schwartz the list, and asked him to look it over, to see if there were any names on the list that were familiar to him.

Q Yes, anything else?

A And if there were, to let him know.

Q To let Mr. Miller know?

A Yes.

Q Did Mr. Schwartz proceed to do so then and there, or was this --

A I don't know. I left the room.

Q Was anything else said in your presence at that time?

A No.

Q Do you have any knowledge or information as to anything that was said after you left the room?

A No.

Q Do you know whether Mr. Schwartz in fact looked at the list -- I will reword that. Do you have any knowledge or information that Mr. Schwartz in fact thereafter looked at the summary lists?

A He told me that he did when we discussed the matter briefly on the 18th.

Q What did he say?

A He indicated that he had told Mr. Miller that he was familiar with, I think two names on the list.

Q What are the two names?

A I don't remember.

Q Did he tell you anything else?

A He said that he had bought shares in one.

Q He bought Grace from one of the two names?

A Yes.

Q NJB or one of the other stock?

A NJB.

Q When?

MR. KILL: When he bought shares or when he told him about it.

Q When he bought shares.

A I think it was June 14th.

Q Did he say how he had come to buy shares?

A My recollection of the conversation was that he

was repeating what he had told Miller, in that he knew the particular name on the list, and he called them, and he said, I am a buyer of NJB, by the way, how are you, and so on." And the conversation resulted in a sale.

Q Did he indicate to you anything else that he decided with that person at that time?

A No.

Q Did he indicate to you whether the conversation that resulted in a sale had previously involved the possibility of that shareholder joining with D-Z in the call of a special meeting?

MR. KILL: Objection to the form of the question.

A No.

Q Was anything said on that subject?

A No.

Q Did he indicate why he had called the shareholder?

A No.

Q Did you ask?

A No.

Q A few days earlier you had a meeting with Rubin Wachtell, where one of the discussions under

consideration was a clarification of the proxy rules. Mr. Miller, an employee of Cantor, Fitzgerald is now telling you on June 18th that on June 14th he had called a shareholder of NJB. Your testimony is you did not -- Mr. Schwartz, an employee of Cantor, Fitzgerald is now telling you that four days earlier he had called a shareholder of NJB, whose name he had found on a summary of the shareholder list.

Is it your testimony that you did not inquire of him the purpose of the call?

MR. KILL: I am going to object to the form of the question. I think it is characterization of the witness' testimony. It is not complete nor totally accurate. It presupposes facts not testified to, and I don't think the question is a proper question that can be answered.

MR. WACHTELL: I think my characterization isn't a characterization. My resume is perfectly accurate.

Q Is my resume in any way contrary to your recollection, Mr. Orbe?

MR. KILL: It is repetitious, it is an attempt to directly ascertain from Mr. Orbe some direction, perhaps obtained pursuant to a meeting which we have already indicated was privileged.

Q Is it your testimony that when Mr. Schwartz told you that he had contacted a holder whose name he had found on a summary of the shareholder list that you did not seek to inquire from him the purpose of that call?

MR. KILL: He has already testified to that.

MR. WACHTELL: I want to be sure that we understand each other.

A Yes.

Q And he didn't volunteer the information, is that correct?

A Yes.

Q How many shares were involved in the purchase?

A I believe it was 5,000 shares.

Q On what date June 14th?

A I believe so.

Q Was that trade executed on the Exchange?

A No.

Q You do not recall the name of the shareholder?

A I believe it was a bank in Alabama.

Q Has Mr. Schwartz ever told you anything else that he did with that summary of the shareholder list?

A No.

Q Do you have any knowledge or information of anything else he did with that summary of the shareholder list?

A No.

Q Have you ever heard in any way, shape or form, that he placed any telephone call to any other name that appeared on that list or summary thereof?

A I believe he called the other name on the list that was familiar to him.

Q What is the basis of your belief?

A I think he told me, but I am not sure.

Q When?

A At the same time he told me about the other one.

Q June 18th?

A Yes.

Q What was the other name?

A I believe it was a bank in Jacksonville.

Q Jacksonville?

A Yes.

Q Did he indicate the purpose of that call?

A No.

Q Did you ask?

A No.

Q Didyou give any caution or directions to Mr. Schwartz with respect to whether he could or could not, should or should not call names on the list?

MR. KILL: Objection to the form of the question.

A No.

Q Do you know whether any other person in or out of Cantor, Fitzgerald ever gave any such instructions to Mr. Schwartz?

A I don't know.

Q One way or the other?

A That's correct.

Q Did you in words or in that substance say to Mr. Schwartz, "You know, there are very stringent rules about soliciting proxies or consents to a meeting?"

MR. KILL: I object to the form of the question. It is highly repetitious. I think he has testified at least three times concerning that particular question.

MR. WACHTELL: I don't think. I think it is the first time I asked the question.

MR. KILL: I think not.

MR. WACHTELL: May I have an answer, I think the record will show that this is the first

time I asked this particular question.

A No.

Q Did you ever tell Mr. Schwartz not to call any names on that list?

A Yes.

Q When?

A When Mr. Miller first gave him the list.

Q June 14th?

A Yes.

Q Tell me what was said.

A I indicated to Mr. Schwartz my understanding of who certain of the holdings represented.

Q Tell me what you said?

A I said in one case, for example, I think it was 5500 shares, I said, that is a nominee for Greater Jersey Bank Corp.

Q And what was the record holder of those shares?

A It is one of those street names, I don't recall.

Q What othernames did you indicate to him not to call?

A I pointed out -- it wasn't that it was not on call, it was that I -- you know, my commen to him was forget about these shares, and I went down the list of Taub and Simon, and Holloway, Holloway's family,

the holdings of Prime Motor Inns, and the holdings in the Trust Department of New Jersey Bank, and the holdings of Larry O'Brien.

Q Were you going down both of these summaries, the ones that ran up to 9,999, and the one to 10,000 and up?

A Yes.

Q And when you said to Mr. Schwartz forget about those particular blocks, what did you mean?

A Just what I said, forget about them. Those stocks are not for sale or anything.

Q What did you understand he was going to do with the ones that he was not to forget about?

MR. KILL: I will object to the form of the question.

MR. WACHTELL: I will stand with it.

A My understanding was that he was going to call those people that he knew; which turned out to be the two that I mentioned to you before.

Q Did you understand that he knew Mr. Taub?

A No.

Q Did you understand he knew Mr. Holloway?

A No.

Q Did you understand that he knew Mr. O'Brien?

A No.

Q Or any other of the other names you indicated that he should stay away?

A I know, I was trying to be helpful in terms of identifying --

Q People he should stay away from. Is that correct?

MR. KILL: Let him finish the answer, please.

A For information purposes, he should know who owned those shares.

Q And had he previously indicated to you that he knew any of those people?

A No.

Q Did you instruct him or did you hear him being instructed by Mr. Miller or anybody else that he should only call those people that he knew?

A No.

Q Did you instruct him or did you hear Mr. Miller or anybody else instruct him that in placing any telephone calls that he did place, that he should not request any proxy or consent for the call of a special meeting or discuss the subject?

MR. KILL: I object to the form of the question.

A No.

Q Is there any other employee of or officer of Cantor, Fitzgerald who was furnished with these summary lists?

A To the best of my knowledge, no.

Q Is there anybody outside of Cantor, Fitzgerald who was furnished these summary lists?

A I testified to that earlier.

Q I believe you did, would you humor me and repeat it, I think you are right, I don't have it in mind.

A To the best of my knowledge, no.

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EXCERPTS FROM DEPOSITION OF BRUCE R. DAVIS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

D-Z INVESTMENT COMPANY,

Plaintiff,

vs.

ROBERT E. HOLLOWAY, MELVIN S. TAUB, MAURICE J. BRICK, PETER E. SIMON, NORMAN BRASSLER, CHARLES GILLER, HERBERT E. HARPER, DR. GORDON McKINLEY, JAMES R. MOSELEY, III, JACK G. TAYLOR, DALLAS S. TOWNSEND, JR., and, NJB PRIME INVESTORS,

Defendants, 74 Civ. 2379 (I.B.W.)

and

SECURITY MANAGEMENT CO., INC., CANTOR, FITZGERALD & CO., INC., BRUCE R. DAVIS, JEROME ZIMMERMAN, RALPH M. BECKER, SAUL BECKER, BERNARD KROLL, MAX SOPHIER, HAROLD LEVOW, HAROLD B. LEVIN, HARVEY JACOBSON, and SEYMOUR WEINBERG,

Additional Defendants to Counterclaims

DEPOSITION of BRUCE R. DAVIS, taken pursuant to Notice, held at the offices of Wachtell, Lipton, Rosen & Katz, Esqs., 299 Park Avenue, New York, New York, on the 22nd

BENJAMIN REPORTING SERVICE
5 Beekman Street
New York, New York 10038
374-1138

day of July, 1974, at 3:00 p.m., before Irwin H. Benjamin, a Notary Public for the State of New York.

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APPEARANCES:

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of Counsel

* * *

B R U C E R. D A V I S, having been first duly sworn was examined and testified as follows:

EXAMINATION BY MR. WACHTELL:

Q Would you state your full name and home address, please?

A Bruce R. Davis, 4332 Conway Valley Court, Northwest, Atlanta, Georgia.

Q What is your relationship with Security Management?

A I am the Chairman.

Q What else?

A Director.

Q What else?

A That is it.

Q Are you a stockholder?

A Yes.

Q What percent?

A Approximately sixty percent.

Q Who are the other stockholders?

A Approximately 25 others.

Q Can you name them for me, please?

A I don't have -- I can name a few. Sidney Rose, Ralph Becker, Ron Levin, Donald Press, Arnold Frank, Jack Rothenberg. I don't know the rest of them by heart.

Q I show you a copy of a document that has been marked as Defendant Trustee's Exhibit 4 for identification on a prior deposition herein, and direct your attention to Schedule B thereof, and to the list of names that appear there.

Are any of those people stockholders of Security?

A No.

Q When was Security formed?

A 1963 and 1964, I believe.

Q Of the group of investors or persons that you indicated as being stockholders be such from the inception?

A No.

Q When did they become stockholders?

A I believe in 1972.

Q In what manner?

MR. WILD: Objection to the form of the question.

Q How did they come to be stockholders?

A They purchased stock.

Q What was the total dollar amount of stock purchased by such stockholders at that time?

MR. WILD: Are you asking for the consideration

that was paid?

MR. WACHTELL: Yes.

A My recollection is around -- somewhere around $250,000.

Q Was the offering of that stock registered under the Securities Act of 1933?

MR. WILD: I will object to the form of the question so far as it uses "offering."

Q Was the stock offered to those persons to purchase?

MR. WILD: If the witness knows.

In the respect that it calls for a legal conclusion, I object to it.

Q Did someone say to these people in words or substance, "Would you like to buy stock of Security"?

A Yes.

Q Did you say?

A I might have.

Q Do you have any recollection of saying it to any of those people?

A Yes.

Q Was there any writing in which they were given information about Security?

A The writings, if any, and I am not sure what they were, were done under the guise of our counsel, and I am

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not sure exactly what it was, but I am sure it is available, if you need to see it.

(continued on next page.)

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Q Now, I will ask you the question I asked you a moment ago. Was the transaction by which stock in Security was made available to these people to purchase, registered under the Securities Act of 1933?

A I am not sure.

Q One way or the other?

A That's correct.

Q Is there any record of how many people were communicated with in connection with that transaction and given the opportunity to purchase its stock?

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Q Okay. Is there any record as to how many people were made aware of this opportunity to invest in the stock of Security in 1972?

A As I repeat my answer, the complete files as related to that, to your "offering" is in the hands of our attorney.

Q Does that include the identity of all persons who were communicated with?

A I am not sure.

Q Would you tell me any knowledge or information you have as to the number of persons who were communicated with for this purpose?

A I wouldn't have any idea.

Q Did everybody who was communicated with agree to buy stock?

A I don't know.

Q One way or the other?

A I really don't know.

Q Did you ever discuss the possibility of buying stock in Security with any person in 1972 where the person did not ultimately buy stock?

A No.

Q Everybody you talked to was a buyer, is that correct?

A Yes.

Q You never struck out?

MR. WILD: I object to the form of the question.

A No.

Q My congratulations to you as a salesman, Mr.

Davis.

Do you have any knowledge or information of anybody else having talked to anybody about buying stock in Security where the persons spoken to did not buy?

A No.

Q No information whatsoever, is that correct?

A That's correct.

Q What person or persons other than yourself do you have any knowledge or information talked to anybody about buying stock in Security?

A Mr. Press and Mr. Levin.

Q What does Mr. Press do now?

A He is an attorney.

Q With what firm?

A His own.

Q Is it a name of a firm or just Donald Press?

A They call them Stockell & Press, or Press & Stockell.

Q Is that where he was located, and was that his professional affiliation at that time?

A Yes.

Q Where were the purchasers located geographically?

A I do not remember. It is all in that file.

Q Do you know where your stockholders --

A I don't have this information on the tip of my tongue, no.

Q Were they all in Atlanta?

A No.

Q Were they all in the New York metropolitan area?

A No.

Q Were any of them in the New York metropolitan area?

A Yes.

Q When you say the whole file is with your attorneys, do you mean Mr. Press?

A No.

Q Who do you mean?

A Roze & Stern. Counsel for Security Management.

Q Where are they located?

A Atlanta, Georgia.

Q Do you have any files where --

A I say the whole file is there, I couldn't tell you.

Q Do you have any files or does Security have any files in connection with that offer?

A I am not sure we physically have them.

Q What happened --

A They may be at the attorneys' office.

Q Who is Mr. Levin?

A He is a stockholder.

Q Where is he located?

A Long Beach, New York.

Q What is his professional affiliation?

A He is a --something to do with the stock market.

Q Does he have a firm?

A He used to be employed by a firm called D.A. Campbell, I think they are still in business, I am not sure.

Q Is he still employed by them?

A As I say, I don't know.

Q Do you know where he is employed now?

A He resides, and has his office at his home.

Q Where is that?

A Long Beach.

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Q Now, what is the business of Security?

A They are in apartment management and condominium development business.

Q Anything else?

A No.

Q Did a time come when you conceived of the idea of seeking to take over control of a REIT or some other finance or investment-oriented company?

A Yes.

Q When did you first conceive of that idea?

A Sometime in the middle of 1973.

Q Did you conceive of it yourself, or did somebody else suggest it to you?

A I think I conceived of it myself.

Q And at the time that you first conceived of that idea, would you describe for me in substance what your concept was?

A I had no general concept; except that potentially there might be an avenue for a good investment in that particular area.

Q When you say that particular area, would you specify for me what you were thinking of at that time?

A Any company involved in financing, somewhat related to real estate.

Q Did you discuss your concept at that time with anybody?

A I don't remember.

Q Did you do anything about your concept?

A Investigative work.

Q What did you do?

A I studied various financial records which were public by companies publicly held.

Q REITS?

A Some.

Q Other types of companies as well?

A Yes.

Q Was one of those companies NJB Prime?

A Yes.

Q How long did that investigation take you?

MR. WILD: What investigation?

MR. WACHTELL: He said he made an investigation by studying various financial records of those companies that were publicly held.

MR. WILD: It wasn't clear whether you were talking about NJB Prime or others.

MR. WACHTELL: I am sorry. I accept the suggestion.

Q The investigation that you just described as being made of a group of companies.

A Through the middle, the early part of 1974.

Q What did you do about your concept then, if anything?

A I am not sure I understand your question.

Q You say you investigated and your investigation took you through early 1974. Let me withdraw that question, and ask you a different one.

During the period that investigation was taking place, through early 1974, other than investigating as you have described, did you do

anything else to carry forward with this concept?

A You could be more specific -- I am not sure I follow you.

Q Did you do anything; did you talk to anybody, did you take any steps, did you do anything in the world to advance your concept other than looking at the records of certain publicly-held companies?

A Are you talking about through the early part of 1974?

Q That is right.

A Yes. I tried to formulate a plan.

Q And tell me what you did in that respect?

A I formulated several alternatives as a going forward plan, and then took the necessary steps that I felt would enhance putting the program in action.

Q Let's take first this formulation of a plan. Did you do that in writing?

A Not basically.

Q Is it reflected in any writing?

A I believe there is a letter in your possession which outlines one of my alternatives.

Q A letter to whom?

A Saul Becker.

Q That is the letter in March?

A I believe that is the date, yes.

Q I show you a Xerox of a letter on the letterhead of Security Management bearing date March 15, 1974; apparently written by Bruce R. Davis, to Mr. Saul Becker and ask you if this is the document to which you just referred.

A Yes.

MR. WACHTELL: I will mark that as Defendant Trustee's Exhibit 14 for identification.

(Document referred to was marked Defendant Trustee's Exhibit 14 for identification.)

Q I show you Exhibit 14 for identification and ask you when you first formulated the plan embodied in that letter?

A Sometime in the beginning of 1974.

MR. WILD: If you have to read the letter to refresh your recollection, you may do so.

Q You indicated that the plan embodied in Exhibit 14 was one alternative. Were any other alternative or alternatives embodied in any document similar to Exhibit 14?

MR. WILD: Objection to the form of the question.

Q I will reword it.

Was any other alternative or alternatives to that embodied in Exhibit 14 embodied in any other document?

A They may have. I don't have a definite recollection.

Q Do you have any recollection of any other alternative being embodied in a document that you had conceived of prior to that time?

A This is not an alternative, this is just one of my nondescript ways of saying a plan, and I had several other plans, so I am not sure it was the only --

Q What were the other plans, describe them, please.

A One plan was acquiring an investment advisor.

Another plan was a straight-out merger. Plans as they relate to shell corporations; not shell, really, but publicly-held companies.

Q Any others?

A Not that I can think of.

Q So, basically, you had four different plans that you were at least considering, is that correct?

MR. WILD: Objection to the form of the question.

Q Did you have four different plans that you

were considering, one being the one embodied in Exhibit 14, and the other of the three that you have described to me?

A I guess you might say yes.

Q You used the phrase straight-out mergers. Would you describe to me what you meant by that?

A Our company with another company merging into one company.

Q On a negotiated basis?

A Yes.

Q Did you ever as time went on conceive any additional or different plans?

A I don't recall any.

Q Now, when did you first communicate to anybody the plan embodied in Exhibit 14 for identification?

A I believe that was my first writing.

Q Prior to the date of that writing, March 15, 1974, did you ever have any oral communication or discussion with any person concerning any of your plans?

A Yes.

Q Tell me the name or names of the person or persons with whom you discussed any of your plans prior to March 15 of 1974?

A I believe I discussed it with Loeb Rhoades,

Wertheim & Company, and Morgan Guaranty Trust Company.

Q Would you tell me what you discussed with Loeb Rhoades, you say you discussed it, the plan embodied in Exhibit 14?

A The concept.

Q The concept?

A Yes.

Q When did you discuss it with Loeb Rhoades?

A Prior to that.

Q For what purpose?

A Seeking out what their thoughts were as it related to the matter, and whether they could be of any assistance to us.

Q Did you wish them to invest with you as investment bankers?

MR. WILD: Objection to the form of the question.

MR. WACHTELL: I will stand on it.

MR. WILD: The witness may answer.

A No.

We had -- I had no preconceived idea.

Q Did you have any written communication with Loeb, Rhoades on the subject?

A No.

Q Any correspondence?

A No.

Q Did they write you any memoranda or correspondence on the subject?

A No.

Q When did you communicate with them?

A Sometime prior to March. I have no recollection of the date.

Q What person or persons at Loeb, Rhoades?

A I don't recall the fellow's name.

Q Wertheim & Company, when did you communicate with Wertheim?

A About the same time.

Q Was that with respect to this plan embodied in Exhibit 14?

A No. It was just general concept.

Q For what purpose did you communicate with them?

A The same, to see if they could assist us.

Q Any writing?

A No.

Q With whom at Wertheim did you communicate?

A I don't remember the fellow's name.

Q Morgan Guaranty. When did you communicate with them?

A About the same time.

Q For what purpose?

A The same purpose.

Q With what person or persons?

A I think the fellow's name was Jacob Cath.

Q Did you submit any writing to him?

A I believe I wrote him a letter.

Q Did he submit any writing to you?

A No.

* * *

Q Now, prior to March 15, 1974, did you have any discussion with any other person with reference to any of your plans?

A Are you referring to persons outside of my group, such as Mr. Zimmerman or --

Q Outside, inside, to anybody in the world?

A It is too broad. Mr. Zimmerman, for sure, but I can't tell you anybody else.

Q Did you discuss it with Mr. Saul Becker's brother?

A Yes.

Q He is in your company, is that correct?

A Yes.

Q You discussed it with him?

A Yes.

Q Was there any memoranda produced or any writing about what you were talking about?

A No.

Q Did he write anything?

A No.

Q Did you make any notes?

MR. WILD: With respect to "Did he write anything," I object to the form of the question; only to the extent of his knowledge, of course.

MR. WACHTELL: I would assume that is true of every question, Mr. Wild, otherwise as indicated.

A No.

Q Prior to embodying your plan in this letter of March 15, 1974, had you ever made any notes on the subject?

A No.

Q You never put a word down on paper, formal or informal about any of your ideas, is that correct?

A I don't recall putting anything down, no.

Q Now, when did you first talk to Mr. Zimmerman about your plan?

A I don't recall.

Q Was it prior to March 15?

A I have already said that.

Q It was?

A Yes.

Q Was it in 1974 or 1973?

A Are you talking about this plan?

Q Well, let's first find out the first time you talked to Mr. Zimmerman either from the time you first conceived of the plan of taking over a company involved in financing somewhat related to real estate.

A About mid-1973.

Q Mid-1973?

A Yes.

Q That was right up early in the game, is that correct?

A That is correct.

Q And now, would you tell me, is there anybody else other than Mr. Zimmerman that you spoke to about

this general plan at any time in 1973?

MR. WILD: I believe that is repetitious.

MR. WACHTELL: I don't think it is. If it is, it hasn't been answered.

A I said it was too broad, I couldn't answer it. I don't have any idea.

Q I don't know how to make it narrower. I am trying to find out the name of any person in the world, other than the Mr. Zimmerman and outside of Security with whom you spoke on the subject, in 1973?

A I might have talked to bankers, I don't remember.

Q Give me your best recollection of any bankers you believe you may have spoken to?

A I have no recollection.

Q Bankers in Atlanta?

A I said I have no recollection.

Q I can only ask you for your recollection, on the other hand, I do want to get your recollection, and if you have any, I sure want to hear it.

Now, do you have, as you sit here now, any recollection of having spoken to anybody in the world outside of Security other than Mr. Zimmerman in 1973 about this plan of taking over a company involved in financing somewhat related to real estate?

A As I say, I might have talked to people, I don't

remember the general conversation. Nobody with a plan as this.

Q Did you talk to anybody about the possibility of their desire to invest in such a project?

A No.

Q You remember Mr. Zimmerman, is that correct?

A Yes.

Q Tell me what you recall discussing with Mr. Zimmerman the first time you talked about it?

A I merely discussed the concept.

Q What did you say to him, and what did he say to you?

A It was my opinion that the stock market prices were well below the real value of the companies in the finance-related fields, and there may be an opportunity for investment.

He concurred in the idea, and I told him I was going to go forward and seek out that which I thought were good investments.

Q Do you recall anything else being said on the subject?

A No.

Q Did you indicate to him why you had picked him of all the people in the world to talk to on the

subject --

A Well, he is well regarded in the financial community in Atlanta. He had experience prior with people in foreign exchanges, foreign money, bankers, et cetera, and he was actually the gentleman who knew the person at Wertheim, I don't know the fellow's name. That is how I got to Wertheim, and we were in close association at that time.

Q When you say foreign money, would you tell me what you refer to?

A Well, just he had bank accounts with people in Europe, et cetera; and he just knew them, who were looking to make loans in America.

(continued on next page.)

Q And did you communicate to him in the conversation that you thought that this concept that you were working on might be of interest to people in Europe who were interested in making loans to people in America?

A No. He indicated that.

Q He indicated that?

A Yes.

Q I think my question to you is why you singled him out of all the people in the world to talk to?

A I have already told you that.

MR. WILD: Objection to the form of the question. It has been asked and answered.

Q You were aware that he had communication with people in Europe who were interested in investing in America?

A Partially. He also is well regarded in the financial community.

Q Now, when was the second time that you talked to Mr. Zimmerman on the subject?

A I couldn't tell you. I was in constant contact with Mr. Zimmerman on other matters.

Q When was the second time you talked to him on this matter after this initial communication that you place being in mid-1973?

A Periodically through '73.

Q How many times all told in 1973?

A I would have no idea.

Q Appreciating your difficulty in delineating what may have been said at one meeting from that in another in a sequence of meetings and focusing your attention on this period in 1973, would you tell me what thesubstance of your ongoing conversations with Mr. Zimmerman on this subject were?

A During 1973 there were no more than just peripheral conversations, because I had not accumulated any data at that time.

Q Did youindicate to him that if you decided to go ahead, you would take him in on the deal?

MR. WILD: I object to the form of the question.

Q In words or substance?

A I indicated that we would try to work together on it.

Q Did you indicate to him what you conceived his role to be in any such transaction?

A I didn't.

Q What did you say to him on that score?

A I would look to him to arrange the financing.

Q Now, do you have any recollection in 1973

of speaking with anybody else on the subject?

MR. WILD: Other than has been testified to?

MR. WACHTELL: I assume the word "other" would cover that, Mr. Wild.

A I think we talked to -- I was talking at the time, in late '73 to Cantor, Fitzgerald.

MR. WACHTELL: Off the record.

(Discussion off the record)

Q And would you tell me how you came to Cantor, Fitzgerald?

A Mr. Willard Malkam, a real estate -- I am not sure he is a broker or in New York, and an old friend of mine, quite by accident, he and I bumped into each other, and he wanted to know if I had any real estate for sale. And I informed him that I had some apartments that I might consider selling; and he, I guess, was you might term took a listing, and then informed me that Mr. Bill Miller of Cantor, Fitzgerald would be coming to Atlanta to take a look at the properties.

Q Did Mr. Miller come to Atlanta?

A Yes.

Q When?

A Sometime in the latter part of 1973.

Q Was any transaction made for sale of any of your apartment properties?

Excerpts from Deposition of Bruce R. Davis

A No.

MR. WILD: At any time.

Q At any time?

A To Cantor, Fitzgerald, right?

Q To Cantor, Fitzgerald or anybody affiliated with Cantor, Fitzgerald or in any way, directly or indirectly arranged by Cantor, Fitzgerald or in which Cantor, Fitzgerald had any participation or role?

MR. WILD: I object to the form of the question. The witness may answer if he understands it.

A I will answer it this way: We concluded transactions with Malkam, but nothing through Cantor, Fitzgerald, other than transactions.

Q I think I am going to have to go back and try to clarify.

You say that Mr. Malkam sent Mr. Miller of Cantor,Fitzgerald to come to Atlanta to take a look at certain properties that you had for sale, is that correct?

A That's correct.

Q Did you ultimately make a transaction with Mr. Malkam with respect to any of those properties?

A No.

Q You ultimately made a transaction with Mr. Malkam with respect to some different properties, is that correct?

A Yes.

Q Where were those properties located?

A In Atlanta.

Q Were those properties inspected by Mr. Miller?

A Not on that particular instance.

Q On another instance?

A Yes.

Q Do you know what Mr. Miller or Cantor, Fitzgerald's role was in the sale of such properties from your enterprise to Mr. Malkam?

MR. WILD: Objection to the form of the question. I don't believe that the witness testified that he sold to Mr. Malkam.

A I sold -- Mr. Malkam was like the broker in the transaction.

Q What was Cantor, Fitzgerald's role in such a transaction?

A They were attempting to be - act as a principal in purchasing the very same property which was sold to another party.

Q Am I to understand you to be saying that their position was ultimately unsuccessful in the transaction?

A That's correct.

Q They got nothing as far as you know?

A Nothing.

Q Do you have any knowledge or information that they received any fee, from yourself, your company, or the purchasers or anybody else?

MR. WILD: Objection to the form of the question.

A They did not.

Q Did they have any participation with any other purchaser to the best of your knowledge or information?

A That's correct.

Q Now, when Mr. Miller came to Atlanta, on the first occasion, did you discuss with him this concept of yours?

A No.

Q What happened next with respect to any communication between you and Cantor, Fitzgerald with respect to your concept of taking over some company?

A At the same time that Mr. Miller came to Atlanta, on a matter unrelated, a Mr. Orbe and a Mr. Lee happened to be also in Atlanta.

I was informed that their role at Cantor, Fitzgerald was mergers, et cetera, as related to public companies. As a matter of fact, they represented somebody in Atlanta.

A situation came to my attention, in Atlanta, of a possibility of acquiring a publicly held real estate oriented company, and I contacted Mr. Lee, actually, because Mr. Orbe was out-of-town, and then made a trip up to New York and spoke with Mr. Miller, and Mr. Orbe.

Q You said that Mr. Orbe and Mr. Lee were also in Atlanta at the time that Mr. Miller was there, -is that correct?

A That's correct. They came in that night.

Q When is that that we are talking about?

A Sometime in October, November '75.

Q Now, how did you come to know that Mr. Orbe and Mr. Lee were in Atlanta?

A Because when I invited Mr. Miller for dinner, he said two associates were in town, so we all had dinner together.

Q And it was at that dinner that you learned that

particular function that Cantor, Fitzgerald had to do with mergers and the like with respect to public companies, is that correct?

A Yes.

Q Did you have any discussion at that time with any of the Cantor, Fitzgerald personnel about this concept of yours?

A No.

Q How long thereafter was it that the situation came to your attention about acquiring a public real estate company?

A Several weeks after that.

Q And what was the company?

MR. WILD: Objection. I believe it is irrelevant, unless it can be shown to be related to NJB. Can you rephrase it.

MR. WACHTELL: I think the whole fact of the relationship between this witness and Cantor Fitzgerald. No, I don't choose to. I think it is a proper question, and I will stand on it.

MR. WILD: I am going to permit the witness to answer the question.

A A company called Southern Syndicate.

Q Where is that located?

A I believe it is in Atlanta.

Q You then communicated with who at Cantor, Fitzgerald?

A I telephoned a Mr. Lee to set up an appointment, and I came to New York.

Q And who did you meet with when you came to New York?

A Miller and Orbe.

Q And you have previously met with Orbe in Atlanta at this dinner, is that correct?

A Yes.

Q Your meeting in New York was not the first time that Mr. Orbe had set eyes on you, is that correct?

MR. WILD: I object to the form of the question. It has been asked and answered.

Q When Mr. Orbe met you in New York, did he indicate that he had previously known you and met you?

A I would hope so.

Q Did he, I would hope so, but some of us have very bad memories for names and faces, maybe Mr. Orbe is one of those. When you met with him in New York, did he indicate to you that he had met with you at dinner in Atlanta several weeks before?

A Yes.

MR. WILD: In words or substance.

Q Would you tell me what was discussed at the meeting in New York?

A I displayed the financial information that I was given on Southern Syndicate, the price, et cetera, was being offered at; and it was quickly decided that this was not a good value.

Q Did you indicate to any of the gentlemen from Cantor, Fitzgerald at that meeting what you wanted of them, and why you were there talking to them?

MR. WILD: Objection to the form of the question. It is not indicated that he spoke to anyone there other than Mr. Orbe.

MR. WACHTELL: I will stand on my question.

(Question read)

A Yes, I indicated that I sought their assistance in evaluating the company that I brought to them, and also we got around to it, that they might know where the necessary funds might come from to acquire it.

Q Did you indicate to them how much in funds was required for that particular transaction?

A No, we never even got that far.

Q The offer that had been made to you -- you say the company had been offered to you?

A Yes.

Q How much in funds was required based upon that offer?

A I don't remember. It was a price per share.

Q Would you give me the best of your recollection, of the order of magnitude?

A If I recall, itwas somewhere around two, two and a half million dollars, I don't remember exactly.

Q Which gentleman or gentlemen from Gaetor, Fitzgerald were present at this meeting in New York?

A Miller and Orbe.

Q Did they indicate when, if the project appeared viable, they would be in a position to help procure financing for a project of that nature?

MR. WILD: Objection to the form of the question.

A Repeat it.

(Question read)

A We never quite frankly discussed it.

Q But you indicated to them that that was one of the things you would wish to talk to them about, and were there for, is that correct?

A I don't recall.

Q Well, did you or didn't you?

A I say I don't recall.

Q When you testified a few minutes ago that you did --

A No, I didn't. I said that I went to them for that service.

Q You don't know if you communicated, that is what you are saying?

A At that meeting, yes.

Q Well, the record will speak for itself, Mr. Davis, as to what the testimony was.

Now, what else was discussed if anything on that occasion other than Southern Syndicate?

A When that was decided that was not a good investment, attention was directed to a company that Mr. Orbe had been involved with, or working on, rather, a company called Data Lease Financial.

Q What was said on that subject?

A That it was his opinion the company, control of the company could be acquired.

Q What else was discussed on that subject?

A General information as related to the company, the problems they were having, and I am not sure, he might have given me some financial data at that time.

Q With respect to Data Lease?

A Yes.

Q Do you remember how much money was needed

for that transaction?

A No. We never got around -- we never determined how much stock we would need.

Q Was there any discussion of whatever financing was needed would be arranged?

A I don't recall.

Q Do you recall anything else being discussed at that meeting?

A No.

Q Did you set forth your concept to Mr. Orbe and Mr. Miller?

MR. WILD: Objection to the form of the question.

A What concept?

Q Well, did you set forth for them that you had conceived this plan of seeking to take control of companies involved in financing somewhat involved in real estate?

A Yes. That was the purpose of the meeting.

Q And when Southern Syndicate was put aside, did you indicate to them that you wanted to come up with some company that would fit the bill?

A No, they came up with Data Lease.

Q I understand that they came up with Data Lease,

but did you indicate to them that you were interested in exploring other acquisition possibilities of companies of this nature?

A I believe I did.

Q Do you recall anything else that was said on that occasion?

A No.

Q What happened next with respect to this plan of yours?

A We acquired various financial information related to the company.

Q You are talking about Data Lease?

A Yes.

Q Yes.

A And made a trip to Florida, to the stockholders meeting. And after more investigative work, it was decided that control could not be gained.

Q And when was that?

A Sometime in the latter part of '73, I would guess. I don't recall.

Q Prior to your writing Exhibit 14 for identification?

A Yes.

Q Dated March 15, 1974?

A Yes.

Q What happened next with respect to your concept of taking over control of a company?

A I began making studies again, of financially oriented companies; until I refined it down to a savings and loan and several REITs.

Q When was that?

A In the beginning of '74.

Q And while you were in the process of going through this narrowing down, did you have any further discussions with Mr. Zimmerman?

A Just current events, where I stood --

Q You kept him posted generally from time to time?

A Yes.

Q Did you ask him to do anything about raising financing?

A Other than the introduction to Hertheim, I don't think so.

Q Did you ask him to test waters at all, so to speak, to find out whether he would be able to get the money if you needed it?

A No.

Q Did you have any further discussions whether

you would go through this narrowing down process with any of the gentlemen from Cantor, Fitzgerald?

MR. WILD: Please repeat that.

(Question read)

A I believe I did, they were furnishing us some public information that they had access to.

Q Was one of the companies that had not been weeded out through this narrowing out process, NJB Prime?

A Yes.

Q What happened next?

A In what respect, where are we, what point now?

Q You told me you were involved in a narrowing down process, you are investigating,Cantor, Fitzgerald is helping you get public information with respect to some of the companies which you were looking at, which was savings & loan or REITs?

A That's correct.

Q What happened next?

A Larry Orbe, I believe this is what happened next, called me one day, and advised me that he had met with a fellow named Silverstein, who was a part owner in a company along with CNA Financial. And that he had known Mr. Silverstein, at least I think he said, he had known him prior, and that on his way from New Orleans back

to New York, he stopped by Mr. Silverstein's office in Sarasota, Florida, and had reviewed basically my ideas with Mr. Silverstein, and Mr. Silverstein was very much interested in trying to come into the situation, either through CNA Financial or his own company, I did not know. I couldn't quite gather how that was going to work, as a joint venture.

Q Before Mr. Orbe called you with this report about Mr. Silverstein, had there been an occasion when you came to New York and met with Mr. Orbe in New York?

MR. WILD: Other than as testified to?

MR. WATCHELL: Yes.

A I don't really recall

Q Was there an occasion where you brought a series of files involving a group of REITs to New York?

A I am sure I did.

Q And did you meet with Mr. Orbe and anyone else from Cantor, Fitzgerald at that time?

A I had periodic meetings up in New YOrk, I couldn't give you exact dates.

Q At which there were discussions about the possibility of taking over a REIT?

A Yes.

Q And when were those discussions in the framework of time of your March 15th letter to Mr. Saul Becker, which has been marked as Exhibit 14?

A They were approximately around that time.

Q And in these discussions about taking over a REIT, I am talking now about discussions in New York with respresentatives of Cantor, Fitzgerald, would you tell me what was said?

A Basically it was to get their opinion as to which REIT looked the most attractive.

Q Did you have any discussion of how you would go about taking over the company?

A You mean as to what? I am not following the question.

Q Did you have any discussion with the people from Cantor, Fitzgerald as to how once you had fixed upon a candidate for the distinction of being taken over, how you would go about doing it?

MR. WILD: Objection to the form of the question.

A You mean mechanically how you go about doing it? I don't quite understand --

Q Yes, did you discuss with him whether -- let me ask you this: Did you discuss with him that

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Excerpts from Deposition of Bruce R. Davis

you would make a tender as described in your letter of March 15th to Mr. Becker?

A Yes, that was one method.

Q All right. What else, if anything, was discussed as to how you go about doing a takeover?

A At that time none other.

Q Did you discuss what you would do with the company after you had it?

A In general terms.

(Continued on following page)

Excerpts from Deposition of Bruce R. Davis

Q Did you discuss NJB?

A In general terms, yes.

Q Did you discuss with respect to NJB what you would do with it once you had it?

A In general terms.

Q Tell me what you recall saying.

MR. WILD: Regarding NJB?

MR. WACHTELL: Yes.

A I would first attempt to clean up the portfolio. Once that was done, I would look at the other avenues, whether it was better off remaining as a real estate investment trust or not. I might move into more equity positions. I might dispose of the advisor. Might merge our company in. Might acquire other REITS.

Q Do you recall anything else you said?

A No.

Q Mr. Davis, you say that you discussed with a gentleman from Cantor, Fitzgerald -- we are in the time frame approximately mid-March, is that correct, of 1974?

A I discussed that, yes.

Q In that time frame that you might dispose of the advisor if you were successful in taking over NJB, is that correct?

A That is correct.

Q Did you indicate that there was any question in your mind on that score?

A Yes. Because I felt I didn't want to necessarily get rid of the advisor, because if he had done improper or negligent acts, I certainly didn't want him to walk away, and I was more inclined to leave him in his place to work out the problems on his own.

* * *

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Q I will repeat the question. Isn't it a fact that in mid-March of 1974, in that time frame, in the discussions you were having with the gentlemen at Cantor, Fitzgerald, that you told them that once you had control of the REIT at some point in time, you would then cancel the advisory contract of the advisor?

A At some point in time, yes.

Q So you told them that sooner or later, you would do it, you might not do it right away, is that correct?

A I think that is a fair statement.

Q And was that your intent?

A Yes.

Q You also said that you told them that you would consider whether to convert the REIT from being a REIT, is that correct?

A No, convert from being taxed as a REIT, yes, as opposed to a regular corporation.

Q Did you tell them you would consider whether to convert the status from a REIT to a regular corporation or did you tell them that you had determined that that was something that would be done once you took over control?

A No. It would be an act that we would consider if we were successful in taking over a REIT.

* * *

Excerpts from Deposition of Bruce R. Davis

Q Mr. Davis, let me direct your attention to the first two sentences on page 4 of your letter of March 15, 1974 to Mr. Saul Becker. Would you read them, please?

A I read it already.

Q Were you honestly stating your intent to Mr. Becker at that time?

* * *

MR. WILD: I object to the form of the question. The witness may answer.

A That was my plan.

Q Did you express that plan in your meeting in mid-March to the gentlemen at Cantor, Fitzgerald?

A I have already answered that was one of my considerations and once we gained control, that would be done. However, each circumstance would stand on its own when we acquired control.

Q As to when you would do each of these steps?

A No, as to the ability and feasibility of each and every step.

Q Now, did you express to the gentlemen at Cantor, Fitzgerald the intention set forth in the first sentence of the second paragraph on page 4 of your letter to Mr. Becker? "It is also my intention to merge our operating company into the corporation on a stock for stock basis."

* * *

A It was a consideration that I conveyed to them.

Q At the time you wrote that sentence to Mr. Becker, did this accurately set forth your honest intent?

A To set it straight, this letter was not written in concrete, which means these are just thoughts and plans, and nothing definitive as related to any particular situation.

Q I am simply asking you whether those were your honest thoughts and plans at that time, what you seeking at that time, and did you to the best of your ability accurately convey to Mr. Becker your thoughts and plans as they then existed?

A It was a general outline of my plans.

Q Have you changed those plans at any time since?

A Yes.

Q Tell me in what respect you have changed them?

A I haven't decided to do any of the acts yet, because I am in no position.

Q Other than that?

A Other than that, I haven't given any thought of any plan.

Q Have you changed in any respect your plans

as to what you would do with NJB if you were successful, you will pardon me for saying, if I say perish the thought, in acquiring control from the manner in which you conceived those plans in or about mid March of 1974?

MR. WILD: I object to the form of the question. You may answer, if he understands it.

A Yes. The only plan I have right now is a plan to somehow acquire control and clean up the situation as it presently exists.

Q Now, have you in any other respect, do you have plans with respect to NJB different than those that you held in mid-March of 1974?

A Yes.

Q In what respect?

A I don't intend to tender.

Q You don't intend to tender?

A No.

Q And when did you abandon your intent to tender?

A Some time in June.

Q When?

A June.

Q When?

A Some time in June.

Q When did you, to the best of your recollection,

was it in June that you abandoned your intent to tender?

A Subsequent to the annual meeting.

Q Is there any respect in which your plans with respect to NJB are different than they were at the time that you attempted to set them down to Mr. Becker in your letter of March 15, 1974?

A I have abandoned anything further in my mind other than the acquisition and the cleaning up of the situation.

Q And when did you abandon for your company your plan to convert the trust to a regular corporation?

A I have given it no thought since the annual meeting. Excuse me, I want to put it back to May 31st. That's the notice date that was sent out.

Q Since May 31st you have given no thought to the plan that you had previously held to convert it to an ordinary company?

A To do anything.

Q At what time did you abandon your plan to merge NJB into your operating company or vice versa?

A I said at the time of May 31st, when the additional depressing news came out about the trust, I decided we will abandon all thoughts of anything about gaining control, and seeking to correct the situation presently

existing. Anything further will have to be done at a time subsequent.

Q And your present plans are if you succeed in acquiring control of NJB, you will then have to focus all over again on whether you want to convert it to an ordinary company, whether you want to merge it or the like, is that correct?

A That's correct.

* * *

Q Is it your testimony that it is your present plan that you will never merge NJB if you require it into your operating company, and that you will never convert it into an ordinary company or is it your

testimony that at this time you don't know what you would do?

A The second part of your question.

Q Now, what else, if anything, do you recall discussing at your meetings in or about March of 1974 with the gentlemen from Cantor, Fitzgerald?

A I don't recall very much else.

Q Did you discuss how much stock of NJB you would want to tender for?

A In March?

Q Yes.

A In March I hadn't decided on what company I was talking about.

Q You entered into a letter of intent with CNA or an affiliate of CNA on March 21st, is that correct?

A That's correct.

* * *

Q Does it refresh your recollection that the letter of intent that you entered into with CNA or the CNA affiliate had as its subject NJB Prime?

A It did.

Q It did?

A Yes.

* * *

Q Did you sign a counterpart copy or an original of Exhibit 13 for identification?

* * *

A I certainly did.

* * *

Q Now, my question is, whether in March of 1973 in any of your dealings with the gentlemen from Cantor, Fitzgerald --

A '74.

Q Thank you. Was there any discussion as to how much of the stock of NJB you intended to acquire or to tender for, to be accurate?

A I think at the time, in all our conversations, we talked about 51 percent of any company we would tender for.

Q Was there any discussion in March of 1974, with the gentlemen from Cantor, Fitzgerald putting aside for the moment, this proposed Silverstein contract, with respect to how the proposed tender would be financed?

A No.

Q Now, when Mr. Orbe told you about this Mr. Silverstein, what did you do next?

A I think I telephoned Mr. Silverstein.

Q And what came from that conversation?

A He invited me to come to his office.

Q In Florida?

A Yes.

Q And did you do so?

A Yes.

Q And what happened then?

A We discussed the matter, and that letter was the outgrowth of that meeting.

Q Referring to Exhibit 13 for identification?

A Yes.

* * *

Excerpts from Deposition of Bruce R. Davis

Q Is it correct that in your discussions with Mr. Silverstein, you discussed the concept of a tendering company to be formed to acquire 51 percent of the shares of NJB?

A Yes.

Q And is it correct that you discussed your contemplation that the shares would be purchased at approximately nine dollars per share?

MR. WILD: May the witness examine the document to refresh his recollection?

MR. WACHTELL: That is why I put it in front of him, Mr. Davis.

A Right.

Q And do you recall how many shares of NJB were outstanding?

A 1,280,000.

Q So half of that is approximately 614,000, is that correct?

A 640.

Q 640, excuse me; 640,000?

A Yes.

Q And 640,000 times nine, I guess we can agree, mathematically is approximately $5-3/4 million, is that correct?

A Yes.

Q And is it correct that you were discussing with Mr. Silverstien and contemplating that the bulk of five and three-quarter million dollars would be put up by the CNA side of the venture?

A Yes.

Q And that your side would put in not less than $500,000, possibly up to a million, but that Mr. Silverstein's group would use their best efforts to keep your investment at the $500,000 level, is that correct?

A That is correct.

MR. WILD: I object to the form of the question. But I will permit the witness to answer.

Q Is it further correct that you were first

to fund the tender entity with the $500,000 or less, if $500,000 was not required, and that the balance of the funds necessary to finance the tender were to be committed for by Mr. Silverstein's group?

A That is correct.

Q Would you tell me what it was discussed, the $500,000 or somewhat lesser sum, would be used for, this initial commitment that you were to come forward with?

A It was to be used for the expenses, et cetera, in preparing for the tender, and in the event it failed, there would be no exposure on the part of CNA.

Q Would you amplify for me a little bit what these expenses were? I know that legal fees happily run very high, but I still would like to know what $500,000 was going to be used for.

A It was legal, printing, and the first money wasn't all to go for expenses; in other words, if we acquired $5,500,000, and these $200,000 expenses -- $5.5 million in stock, and $200,000 in expenses, $300,000 of my money would have been used for the stock purchase, and the balance CNA would put up.

Q Well, was there any discussion as to whether all of the stock would be purchased by the tender offer

or whether some initial purchases would be made in advance of the tender offer.

MR. WILD: All of the stock contemplated to be tendered for?

MR. WACHTELL: All of the stock contemplated to be purchased. If I asked your question, it would be a contradiction of this, in terms of--

MR. WILD: That is precisely what I meant.

A It was all to be by the tendering entity.

Q No, that is not my question. Maybe you are answering me anyway, but let's be clear.

This approximately 640,000 shares, was it contemplated that it would all be purchased in a single batch pursuant to the tender offer or so that some stock would first be purchased prior to the tender?

A No, it would all be at the time of tender.

Q None in advance?

A That is correct.

Q Now, what happened with respect to these negotiations with CNA?

A They terminated in April 12, I believe.

Q At the time that you entered into this letter of intent with CNA, were you aware that CNA held stock in NJB Prime?

A I don't believe so.

MR. WILD: Just a second.

MR. WACHTELL: I really have to modify that.

Withdrawn. Strike it.

Q What did you understand Mr. Silverstein's connection was with CNA?

A I wasn't quite clear, but as I understand it, from hearsay, that he owned 49 percent of -- he or some group of people owned 49 percent of Coaxial Cable, which was a company 51 percent owned by CNA.

Q Did you understand that CNA or any affiliate of CNA was having any role in this proposed venture?

A Yes. CNA, I don't know whether it was going to be through Coaxial Cable or direct, it was, as I would have imagined, it would be a profit center for Coaxial Cable, I would assume. In other words, if Coaxial --

Q My question is, did you understand that CNA or any affiliate of CNA was going to be involved in your tender for NJB?

A They were providing the funds.

Q And what is the basis of your understanding on that score?

A Conversation with Silverstein.

Q Did you meet with anybody else who was representing or purported to be a representative of CNA?

A Mr. Bruce Matthews.

Q And what is his position with CNA?

A Today, I think he is president of a financial group or something.

Q Did you meet with Mr. Matthews prior to the negotiation of March 21 or in connection therewith?

A No. Subsequent.

Q Subsequent?

A Yes.

Q Before the abandonment of the plan?

A Yes.

Q When did you meet with him?

A I am just guessing, but it would be between March 21, and April 5; in Florida.

Q Were you aware at the time you met with -- what was your discussion with Mr. Matthews?

A The same as with Silverstein, the overall concept embodied in this letter.

Q Did Mr. Matthews indicate his acquiescence in this plan?

A Yes.

MR. WILD: I object to the form of the question.

Q At the time that you met with Mr. Matthews, and he expressed the views that he expressed, were you aware whether CNA or any affiliate of CNA held shares in NJB?

A I am not sure, I think I was aware, or made aware that CNA Larwin which is a company managed by one of the affiliates of CNA owned shares of NJB.

Q Did you at that time ever discuss with any attorney or seek any legal opinion as to whether you are entering into this March 21 letter of intent or your meeting with Mr. Matthews necessitated any filing with the SEC?

A No.

Q What happened on April 12 which led to the abandonment of the proposed joint venture with CNA?

A It was merely stated at the meeting which was held at the office of Cantor, Fitzgerald that CNA was under attack itself, and they were too busy to get involved in anything of this nature at this time.

Q Did Mr. Matthews so state or who met on April 12?

A It was Matthews and Silverstein, myself, Bernie Cantor, Bill Miller, and Larry Orbe.

Q And who made the statement about CNA being

under attack?

A Either -- I believe it was Matthews.

Q Did he say by whom?

A Not that I recall. It hit the newspapers that Wednesday, I remember that vividly, and I am not sure it did say who --

MR. WACHTELL: Let's take a break.

(Brief recess taken at this point.)

(continued on next page.)

Q Now, whether the CNA proposed venture fell through or was terminted on April 12th, what happened next with respect to your plan to take over control of NJB?

A I decided to proceed on an accumulation basis.

Q Would you describe what you mean by that?

A Decided to accumulate the stock in the open market.

Q 51 percent?

A No.

Q Tell me just what you decided at that time with respect to acquiring stock of NJB?

A I felt that if I could acquire 300,000 odd shares, that I possibly could gain control of the REIT.

Q Did you at that time decide that you would not make a tender offer?

A Yes.

Q Did you at that time give up any consideration of the possibility of making a tender offer?

* * *

A No.

Q Would you tell me what possible consideration to making a tender offer you still had at that time and describe for me what your thoughts were on the subject?

A If it was possible, that somebody came along and gave me all the money, I would entertain a tender once again.

Q Let me see if I understand and again, at the risk of having Mr. Wild object, I am going to try to summarize what I think you are saying and you can correct me if I am wrong.

At the time you were having your discussions with CNA you were contemplating a tender offer for approximately 640,000 shares of stock at an aggregate cost of approximately five and three quarter million dollars, is that correct?

MR. WILD: Objection to the form of the question. The witness may answer.

A Yes.

Q When that proposal or that plan of a joint venture with CNA fell through, you scaled down your sights somewhat, is that correct?

A That's correct.

Q And you decided to seek to acquire 300,000 odd shares by purchases on the market, is that correct?

A Well, I determined that I think if I could acquire 300,000 shares on the open market, that I would -- that I might be able to acquire control.

Q And am I further correct in understanding that you had not necessarily given up the possibility of making a tender offer for 51 percent but that you did not at that time either have or see where you were going to get the financial wherewithal for the bigger deal, is that correct?

MR. WILD: Objection to the form of the question.

A Can I answer it?

MR. WILD: Yes.

A I think that's pretty accurate.

Q Now, the question I would like to ask you is, did you after the CNA venture fell through, take any steps to explore or investigate or locate or obtain the financial resources to make the bigger deal, to wit,

the tender?

A Yes.

Q You did?

A Yes.

Q Tell me everything you did on that score.

A I would like to withhold the names of the people I saw. I will be glad to tell you everything else.

Q No, I am not going to accept that condition.

MR. WILD: I am going to direct the witness to answer omitting the names of the persons.

* * *

Q Let's talk about source A, to meet your problem, and Mr. Wild's problem, what was the first source that you sought to communicate with with respect to obtaining funds for a tender offer after the CNA deal fell through?

A Wouldn't that just be opposite what you said you weren't going to ask?

Q Excuse me. When did you communicate with source A?

A Since we both don't know which source A is --

MR. WILD: The first.

Q Well --

MR. WILD: Off the record.

(Discussion held off the record.)

MR. WILD: The first.

Q What is the first one?

A The date you are talking about?

Q Yes.

A I would say somewhere in the beginning of May.

Q Is source A a corporation?

A I believe so.

Q What business is it in?

A Financing. Financing of joint ventures, I think that's a better terminology.

Q How were you introduced to source A?

* * *

A Through a broker whose name I really don't know in New York. Actually through Saul Becker, this contact.

Q And what were the negotiations with source A?

A We never really negotiated, we only outlined concepts.

Q Did you meet with the people?

A Yes.

Q What concepts did you outline to them?

A Generally what is revealed in the letter, in the 13(d).

Q Let's go slowly. Let's take them step by step. Did you tell them that you wanted to make a tender

offer?

A That was an alternative.

Q Did you indicate how much money you wanted?

A I indicated what I thought it would take, yes.

Q And what dollar amount was that?

A I think it came to about three and a half million.

Q Did you indicate that you had already begun to buy stock?

A When I first made the contact, I think that it was my first purchase now that I made the contact.

Q So it was earlier than the beginning of May, is that correct?

A The reason why the beginning of May strikes my mind, is because I saw the fellow again, but it was actually rejected, that's why --

Q And the three and a half million was designed to --

A Tender.

Q For how many shares, approximately 400,000 or was the price down?

A No, it was about 400,000.

Q Did you provide any document of whatsoever description to source A?

A Initially I don't believe I did. They turned it down.

Q Ultimately?

A No, initially.

Q Did you ultimately provide any documents?

A Yes.

Q When?

A Approximately 30 to 40 days ago.

Q Excuse me?

A Approximately 30 to 40 days ago.

Q You say initially they turned it down. Did they ultimately change their position?

A Yes.

Q And did they provide financing?

A No.

Q Did they provide a commitment?

A No.

Q What happened 30 to 40 days ago?

A I bumped into him in a restaurant, and he was impressed that we went forward without him.

Q You then renewd your communications?

A Exactly.

Q And how much money did you tell him you wanted then?

A We never really talked dollars. We talked concept.

Q Tell me what concept you talked 30 or 40 days ago?

A They now felt there was no need to tender. That we could accumulate.

Q How many shares were you talking about?

A My guess now was between 350 and 400,000.

Q Is that what you talked about with him?

A Roughly, yes.

Q What documentation did you provide to them?

A All public information.

Q Was there a covering letter?

A I hand delivered it.

Q Do you have a record of the date?

A No, but let me see, I think I can fix it for you. I believe it was about the last week in June. And perhaps thereafter one or two times.

Q What happened after you furnished the material to them?

A They have this under advisement.

Q Have you had any correspondence to them or from them?

A No.

Q Would you tell me precisely what you understand they have under advisement?

A Whether or not they are intending to come in with me in this overall concept.

Q What terms have you discussed?

A Generally we have discussed very little in the way of terms.

Q Have you discussed with any of the representatives of Cantor, Fitzgerald your discussions with source A?

A Yes.

Q With whom did you discuss it?

A Both Miller and Orbe.

Q When?

A I believe Miller attended one of the meetings, the revised meeting.

Q That's 30 to 40 days ago?

A Yes. And then just in general conversation.

Q What was the purpose of Mr. Miller's attending the meeting?

MR. WILD: If you know.

A I invited him.

Q Other than source A, what efforts have you made to obtain funds for a tender or for the purchase of shares of NJB?

MR. WILD: That's two questions.

A And/or you mean?

Q I will leave it to tender, for the moment.

MR. WILD: If any.

A I went to source B, and then negated it.

Q Excuse me.

A I attempted to go after source B, but negated it.

Q When did you attempt to go after then?

A About the first week in July, I believe, thereabouts.

Q How did you go about it?

A I visited their offices.

Q Anyone go with you?

A Initially, Mr. Orbe.

Q How did you come to source B?

A By introduction from Mr. Orbe.

Q What was the discussion that was had?

A It was an outline of borrowing such funds to make a tender. I believe you have a copy of the letter.

Q I show you a seven-page letter agreement dated June 27, 1974 being a Xerox apparently on the letterhead of Financial Resources Corporation, addressed to D-Z Investment Company, attention Mr. Bruce R. Davis.

Is this the document to which you just referred?

A Yes.

MR. WACHTELL: I will mark as Defendant Trustee's Exhibit 15 for identification.

To be accurate, there is a Xerox of a check annexed to the last page.

(Seven-page letter agreement dated June 27, 1974 being a Xerox of which Xerox is annexed to the last page marked Defendant Trustee's Exhibit No. 15 for identification this date.)

Q Is source B Financial Resources Corporation?

A Yes.

Q You testified a moment ago that at some point in time you "negated?"

A Negated.

Q Yes. Whatever arrangement you had with this company, would you tell me when you did that?

A I believe that's dated what --

Q June 27, 1974.

A It was the Tuesday following that July 2nd, I believe. Upon the advice of counsel.

Q Counsel being whom?

A Rubin Wachtel.

Q How did you go about negating this financial commitment?

A I telephoned them, and I never fulfilled the requirement of the additional money to be posted.

Q Would you tell me what additional money you are referring to here?

A The $45,000.

Q Which was due when?

A At the time of signing the letter, actually.

Q Show me where in the letter it so indicates?

A The way it is drafted, it doesn't say it, however as agreed upon, we was supposed to put in an escrow account.

Q Let me see if I understand some things, Mr. Davis.

The letter agreement Exhibit 15 for identification calls for $5,000 to be paid at the time of signing, is that correct?

A That's correct.

Q And $5,000 was in fact paid to Financial Resources Corporation on that date?

A Yes.

Q Which check, which is part of this exhibit?

A Yes.

Q Is it further correct that the agreement calls for $5,000 to be paid on July 19, 1974?

A No. The agreement calls -- the way it is strictly written, it calls for if they produce an agreement, a definitive bank agreement by July 19th, then we have to deposit it. But the agreement we had, which by the way is a little contrary to what it says there, was we

were supposed to put $45,000 in escrow now.

Q When is now?

A The date we signed it.

Q Did you sign it on June 27th?

A Yes.

Q You gave him $5,000 at that time?

A That's all I had at that time.

Q You intended to go ahead at that time?

A Yes.

Q You say even though the agreement says the contrary, it was your understanding that you were supposed to put $45,000 in escrow at that time, is that correct?

A Right, and one of the reasons it was not put in, our attorney was drawing up the escrow agreement.

Q You didn't put it in?

A Yes.

Q Even though you knew it was required at that time?

A Yes.

Q When is it that you say you notified Financial Resources orally that you were not going forward ?

A When we concluded signing the agreement, which -- let me get my dates straight, I am not sure whether

June 27th was a Thursday or Friday, and I will be in a better position to explain it to you. Let's see, June 29th was a Thursday -- the 27th.

That Friday, after signing it, we displayed that to our attorneys, Rubin Wachtel, who then raised issue about Regulation T and Regulation G, which I was not aware of. There were various meetings held, and they went and visited these people on July 1st, which is a Monday.

Q Your attorneys did?

A Yes.

On July 1st, they informed me we could not go through with this transaction, because it violated Regulation T or G, either one. So I called Mr. Eisenstein on Tuesday, and informed him of so. He is the president, and in fact the refund of the $5,000 is still up in the air.

Q Would you tell me what aspect of this agreement you indicated to Mr. Eisenstein, if you did, caused a problem with the Regulation T or Regulation G?

A I was informed and I read the case --

MR. WILD: I am going to object to the form of the question in that it calls for a legal conclusion, to the extent that the witness is able to

answer, I will permit it.

Q Mr. Witness.

A Read the question.

(Question read)

A We were more concerned with Regulation T, in that Larry Orbe had introduced me to Eisenstin, and there has been some cases or something to that effect, that that might be the indication of arranging a loan. Further than that, we checked with the Federal Home Loan Bank or Federal Loan Reserve, one of them, the lawyers, and we did not get a -- we got a reading similar to their opinion, so we decided that with respect to the opinion of counsel, we would terminate our relations as they related to this loan.

MR. WACHTELL: I have to take a minute recess.

(Recess)

Q Are you referring to the Federal Reserve Bank in your last answer?

A I am not quite certain what I was referring to. It was some Federal agency that might look over this type of transaction.

Q Has there been any written communication with respect to Financial Resources with respect to such

negating of the arrangement?

A No.

Q By either D-Z or its counsel or Cantor, Fitzgerald?

A Not that I am aware of.

Q Has there been any opinion of counsel, memorandum, other document of whatsoever description, relating to the desirability and necessity or fact of negating this commitment?

A Only verbal memorandum -- verbal conversation backed up by copies of the various case law. You keep referring to a commitment. It is not a commitment, it is an agreement to commit; which they have no obligation.

Q I direct your attention to second paragraph of Exhibit 15 "In response to your request, this letter is a commitment by FRC, subject to the conditions expressed herein to provide the financing you have requested."

A I would say that --

Q Do you understand that to be a commitment letter?

A No.

Q No?

A No.

Q Who has this case law in their possession, was

it furnished to you?

A I have a Xerox of it.

Q Do you have it?

A It might be with the files I turned over to the attorneys.

MR. WACHTELL: Can we have it introduced?

MR. WILD: I don't know whether it is here.

MR. WACHTELL: I would like produced any document, case law, anything whatsoever that pertains to --

A It was the Sutro case.

MR. WACHTELL: This termination of this commitment.

Q Did you have any discussion with Mr. Orbe or anybody else from Cantor, Fitzgerald about terminating this commitment?

A Yes.

Q When?

A We refer to it as cotingent commitment, so we have no misunderstanding, okay.

I had conversation that day, the following day, the --

Q Which day?

A The day of the commitment, the 27th, 28th, the first and second.

Q When was it that you got the opinion of counsel that there was a problem?

A The afternoon after I signed the letter.

Q And was that the 27th or the 28th?

A If it was in fact signed on the 27th, it would be the 27th. It may have been dated the 27th and signed the 28th, I don't remember.

Q The check is dated the 27th, does that help you any?

A That was the date it was signed, yes.

Q Now, when was it that you were first told by the attorneys that there was a problem?

A That night.

Q When did you first communicate the problem to Cantor, Fitzgerald?

A That instant.

Q Tell me what was said?

A That we have a problem.

Q Who did you communicate --

A By our attorneys.

Q Who were you talking with?

A Miller and Orbe.

Q What did they say?

A They were stunned. They were not aware it was a

problem.

Q Did you describe the problem to them as you understood it?

A Yes.

Q Did you describe to them that as your attorneys were explaining to you, it is improper for a brokerage firm to arrange for the extension of credit that the brokerage firm could not do directly?

MR. WILD: I object to the form of the question.

Q Is that in words or substance that what you described to them?

A I only described that there was a problem and we called an emergency meeting with the attorneys and let them explain the problem.

Q Tell me in words or substance what you recall the attorneys telling Cantor, Fitzgerald on the night of June 27th?

A Well, to give you the urgency of it, we called Miller, and told him that our attorneys had -- were troubled by this loan under Regulation T, which he was not too familiar with, and somehow they informed him basically what Regulation T was.

Q Tell me what they said.

A They informed him that if a broker arranged a loan, which he could not himself do, then it is a violation of Regulation T; such as a stock loan, or purpose loan.

Q And what did Mr. Orbe or Mr. Miller say to that?

A As I recall, Mr. Orbe was in his apartment, packing to go to Spain, and so we called him for an emergency meeting, and he met us at Mr. Miller's office, and they didn't think -- what they did was arranging a loan in the general context of arranging a loan, and that's when we requested that the attorneys supply us with the case law, so we have better insight as to what we are talking about.

* * *

Q What did you hear Mr. Miller or Mr. Orbe say when it was described to them, this view of your attorneys, that what they were doing would constitute arrangement of a loan in violation of Regulation T?

MR. KILL: Repeat that before it is answered.

(Question read)

MR. KILL: I will object to the form of the question.

MR. WILD: I will join in the objection.

The witness may answer.

A They were surprised.

Q What did they say?

A They said that if it was the opinion of counsel that it was a violation, although they didn't think it was, in their general context, they would bend to the client's desire, with me being the client.

Q Did Mr. Miller or Mr. Orbe say they didn't think why it was in the general context?

A They didn't feel in the general terminology of arranging a loan, that they had done that. Unfortunately our attorneys felt that the definition of arranging a loan in the legal context as it related to Regulation T was a lot different than a commonplace arranging.

* * *

Excerpts from Deposition of Bruce R. Davis

111 * * *

Q Mr. Davis, I would like to know whether Cantor, Fitzgerald in the discussion that was had on the evening of June 27, indicated in words or substance whether Mr. Orbe or Mr. Miller indicated in words or substance that they could not see how your lawyers could say that their introduction to Financial Resources

constitutes an arrangement of credit, because they had been doing similar services for you straight along?

MR. WILD: I object to the form of the question.

MR. KILL: I join in the objection.

A Does that mean I can answer or --

MR. WILD: You may answer that question.

MR. WACHTELL: Fine.

A Okay. Repeat the question, please.

(Record read.)

A No such comment was made.

Q Did Mr. Orbe or Mr. Miller on that occasion state that they could not see how your lawyers deem what they had been doing to be an arrangement of credit, because they had been doing the same thing for many years without the same question being raised?

MR. WILD: Objection to the form of the question. I will permit the witness to answer.

A The same question. I believe it is the exact same question I just answered.

Q No, it is a different question.

A The answer is no such statements were made at all.

* * *

Q Was there any discussion at that time as to the legality of your negotiations with Source A?

A No.

Q Has there at any time since the negotiations been any question as to the legality of your negotiations with Source A?

A No.

Q Other than Source A, and Financial Resources, have you, since the termination of your negotiations with CNA sought financing from any other source for the

purpose of making a tender offer for shares of NJB?

A I believe one of them.

Q What was that?

A Source C.

Q When?

A I think there is two, but we will stick with Source C. That was in the end of June.

Q How did you come to Source C?

A A personal friend of someone in my employ.

Q Let's go back to Source A.

A Okay.

Q You indicated that you were introduced to Source A through a broker who was a friend of Saul Becker, is that correct?

A If I said a friend, it was someone who he knew.

Q Who was the broker?

A I told you -- I don't know the broker's name, if I did, I would tell you. That is the name I couldn't remember.

Q Where was the broker?

A Where he physically was located?

Q Yes.

A In Manhattan.

Q Was he a broker-dealer?

A No.

Q What kind of a broker?

A I guess you would call him investment -- I don't know what you would call him. It would be similar to someone that just has a source to -- for these type of funds, I don't know what you call them. I don't know whether he calls himself advisement advisor or what.

Q Is he a member of NASD?

A He certainly is not.

Q You know that?

A Yes.

Q Was it discussed?

A It was discussed, but the type of business he is in, I am sure he is not.

Q Where is his office?

A Manhattan.

Q What address?

A I don't know.

Q What avenue? What street?

A Seventh Avenue, I believe, or Broadway; I am not sure. Itis up in that area.

Q Do you have any document which would refresh your memory as to the identity of this broker?

A No.

* * *

Q Who is the fellow who had the personal friend who introduced you to Source C?

A Mr. Ralph Becker.

Q Who is the personal friend?

A The Source.

Q The source is indeed the personal friend?

A Yes.

Q What business is the source in?

A Retired.

Q Where is the source located?

A I really don't know.

Q Where does he live?

A I don't know. I met him in Chicago.

Q When?

A The end of June.

Q Who else was present?

A Mr. Saul Becker.

Q Before you went to Chicago, did you discuss with anybody from Cantor, Fitzgerald that you were meeting with Source C?

A No.

Q After you met with Source C, did you discuss the fact with anybody from Cantor, Fitzgerald?

A Yes.

Q When?

A That day.

Q With whom?

A Bill Miller.

Q What was your discussion with Source C?

A That the Source C said hello to Bill Miller.

Q Source C indicated that he knew Bill Miller?

A Yes.

Q When you met with Source C, what was your discussion?

A Generally my concept.

Q Of a tender offer?

A Tender or accumulation, I don't remember which. Nothing materialized.

Q How much money did you tell him you wanted?

A About $2 million.

Q What did he say?

A He said he would see what he could do.

Q What was the basis upon which the $2 million was to be raised?

A Through a loan.

Q Was it to be secured?

A It was not discussed. I don't think so.

Q You don't think it was discussed or you don't think it was to be secured?

A I don't think it was to be secured.

Q What were the materials upon which the loan was to be made?

A We didn't get into any definitive terms on that.

Q Did you discuss it?

A No.

Q Did you discuss anything of the terms?

A No.

Q Did you discuss whether it would be repaid?

A No.

Q Did you discuss how it would be repaid?

A No.

Q Did you discuss the source for repayment?

A No.

Q Did you have any thoughts on that subject?

A I always have thoughts.

Q What thoughts did you have as to how you would repay $2 million?

A From earnings.

Q Of what?

A Of the entity.

Q NJB?

A I said entity, borrowing.

Q Were you talking to Source C about NJB?

A I was talking to Source C about D-Z, and acquiring NJB stock.

Q And what earnings did D-Z have or did you

anticipate D-Z would have?

A I don't know.

Q Did Mr. Ralph Becker indicate to you that Source C was a potential source of financing for a transaction of this nature?

MR. WILD: I didn't hear that question.

Q Did Ralph Becker indicate to --

A He was the type that could arrange the financing. He didn't have it himself.

Q Did Mr. Becker indicate what made him think so?

A Just that they were friends.

Q Did he indicate that Source C had done that sort of thing before?

A No.

Q Did he indicate that Source C had not done that kind of thing before?

A No.

Q Do you have any knowledge or information as to whether Source C has arranged financing for purposes of stock or tender offers for stock on any occasion?

A No.

Q Well, one way or the other?

A That is correct.

* * *

Q Has there been any further communication with Source C?

A No.

Q Have the discussions been terminated?

A If lapse of time is a termination, I would say they have been terminated.

Q You are talking about three weeks ago?

A Three or four weeks ago.

Q Have they been terminated?

A I haven't done anything physically to terminate them.

Q Has anyone advised you that Source C was

unwilling or unable to come up with funds?

A No.

* * *

Let us not debate the matter further.

Q Mr. Davis, what was Source D?

MR. WILD: I directed the witness not to answer.

A I just told you, Source D.

Q You refuse to identify Source D?

A Yes.

Q When did you communicate with Source D?

A In the end of June.

Q Where?

A In New York.

Q How did you come to be put in contact with Source D?

A Through Mr. Orbe.

Q Is Source D an individual or a company?

A A company.

Q What business?

A Financing, I think. Real estate financing.

Q When in point of time, did Mr. Orbe put you together with Source D compared with the June 27, 1974 letter with Financial Resources Corporation?

A Source D was in April.

Q You testified a moment ago it was the end of June?

A You asked me when I met him. I didn't negotiate until the end of April. But I met him in April.

Q You met Source D in April?

A Yes.

Q Mr. Orbe introduced you?

A Yes.

Q When did you negotiate with him at the end of June, relative to June 27, 1974?

A Subsequent to June 27.

Q Subsequent to June 27, is that correct?

A Yes.

Q Subsequent to being told by your lawyers that you could not borrow the money from Financial Resources because you have been introduced to Financial Resources by Mr. Orbe, you then proceeded to negotiate with somebody else that you have introduced to by Mr. Orbe, is that correct?

MR. WILD: Objection.

A I didn't say that. You said that.

MR. KILL: I join in the objection.

A I merely said it was a source. I didn't say I negotiated a loan.

Q I asked you if you negotiated --

A You asked me negotiated, not a loan.

Q What did you negotiate with Source D?

A An equity participation.

Q Is there any document which more or less refers in any way to the negotiations?

A No.

Q Did you make --

A We are not far enough along for any of those things.

Q When was the first meeting, give me a date, please.

A July 9; as they related to this transaction; Tuesday, whatever date that was, 8 or 9.

Q Where?

A At their offices.

Q What address?

A Manhattan.

Q What address?

A In Manhattan.

* * *

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Q Mr. Davis, you testified your first meeting was on July 9, did you have any further meeting?

A Yes.

Q When?

A I got to look at a calendar.

July 17 or 18, I am not sure.

* * *

Q Mr. Davis, who was present at the meeting at the offices of Source D on July --

A At the offices of what?

Q Source D; Mr. Wild, the identity of which you refused to have disclosed.

A Mr. George Stern and myself.

Q Who is George Stern?

A General counsel for Security Management.

Q Anybody from Cantor, Fitzgerald?

A No.

Q Who was present at the offices of Source D on July 17th or 18th last week?

A George Stern and myself.

Q Anybody else?

A Yes, the gentleman from Federal Resources.

Q If it wasn't serious, it would be funny. Is Federal Resources the name of Source D?

A I am not answering.

MR. WILD: I direct the witness not to identify the source.

Q Tell me everything you recall being said on Tuesday, July 9th at that meeting?

A The only thing that was discussed was the fee arrangement, and certain options that could not be put into the equity agreement.

Q Fee arrangement for whom?

A For the broker.

Q Was Source D a broker?

A No.

Q Who was the broker?

A I am afraid I can't answer that, either.

Q You have indicated to me that you were introduced to Source D by Mr. Orbe. Are you now saying that there was some broker other than Cantor, Fitzgerald involved?

A Mr. Orbe did not act as a broker in this.

Q When did the broker get into the act?

A From the inception..

Q Did Mr. Orbe introduce you to the broker or did Mr. Orbe introduce you to Source D?

A I am not sure that Source D is different between the broker, principal, I am a little confused in that.

Q What is the business of Source D?

A I already told you, real estate financing.

Q Did you have any knowledge or information whether Source D makes loans for the purchase of stock?

A I said they do not.

Q Other than that statement, did you have any

knowledge or information on that subject?

A No.

Q When you are talking about a fee arrangement to the broker, are you talking about a fee arrangement for Source D or for some third person or entity?

A I believe it was a third person.

Q Who is it?

A I am not sure.

Q What is your best knowledge or information?

A I go back to that other part. If I tell you that, I might as well tell you the source.

Q Are you refusing to answer the question?

A Yes.

MR. WILD: I am so directing the witness.

Q What were the terms that were being discussed for a fee arrangement?

A It was based on the equity investment.

Q Tell me everything that was said, please.

A It was just a matter of the fee arrangement.

Q Can you tell me what was said, how much money you were talking about, what the purpose of it was?

A Talking about a $100,000 fee.

Q For what purpose?

A For what purpose was the fee?

Q Yes.

A For arranging the equity participation.

Q What equity participation, in what?

A In D-Z.

Q How much?

A A million and a half dollars, I think.

Q For what purpose?

A For what purpose was the money?

Q Yes. What was being discussed?

A They were buying stock in D-Z.

Q Who was going to buy?

A Source D.

Q Itself?

A Well, I don't know. That's something I really don't know.

Q Was there any discussion about Source D procuring investors to buy the stock?

A No.

Q Did Source D say it alone was going to buy the stock?

A It didn't say.

Q Did it say it was going to get other people to buy the stock?

A It said it was going to arrange the buying of the stock. I am not sure whether it was itself or another

party, quite frankly.

Q Or parties?

A Or parties.

Q How much stock was being given for the million five, according to the discussions?

A $120 per share, or $123 per share, I believe.

Q Of D-Z, is that correct?

A That's correct.

Q What was the million and a half dollars going to be used for?

A D-Z was going to use the money to gain control, if they could, of NJB.

Q Was there any discussion of how D-Z was going to do this?

A Just through accumulation.

Q Was there any discussion about a possible tender offer?

A No.

Q Was there any discussion that there would not be a tender offer?

A It was a general consensus -- it was my view, and I revealed it to the otherparties, that there would be no tender offering.

Q What was said on July 17th or 18th, when the meeting took place?

A Just a general clarification of some of the conditions that would have to be in the stock offering; in other words --

Q Tell me what was said?

A The only thing that I recall being said was as it relates to -- I inquired as to what type entity would be involved, so we don't get into any problems on that end.

Q What were you told?

A He assured me there would be no problems from their end, and --

Q What kind of problems did you say you were worried about?

A Any security problems.

Q Did you tell him you were in litigation?

A Oh, yes.

Q Did you tell him that in the litigation it was being set forth in a previous offer of notes it was alleged to constitute an illegal public offering?

A No.

Q You did not tell him that?

A No.

Q Did you tell him that in the litigation it was being set forth that the D-Z was an illegal, unregistered

investment company?

A No.

Q Did you tell them that, though?

A No.

Q Did you tell them that in that litigation it was being set forth that your previous purchases of NJB stock had been accomplished in violation of the margin regulations?

A No.

Q Did you tell him that in that litigation it was being set forth that your previous 13(d) filings was false and misleading?

A No.

Q Did you tell them that in that litigation it was being set forth that your conduct had amounted to an illegal tender offer?

A No.

* * *

Q As you sit here now, do you plan if you have continuing negotiations with Source D, to reveal the fact that these allegations have been set forth against D-Z in this litigation?

MR. WILD: I object to the form of the question. The witness may answer.

A I would say that they will be privy to any lawsuit being filed.

Q Tell me what else was discussed on July 17th or 18th?

A I believe that's it.

Q Anything further said about the amount of money?

A NOt that I can think of.

Q Anything further about how Source D would go about getting it?

A No.

Q Anything said about timing?

A Yes.

Q What?

A About fifteen days.

Q What was supposed to happen in fifteen days?

A They would know whether they would have the money for us or not.

Q Have you discussed your conferences with Source D with Mr. Orbe or Mr. Miller of Cantor, Fitzgerald?

A Yes.

Q Have you kept them fully current of your discussions?

MR. WILD: Objection to the form of the question. The witness may answer.

A Yes.

Q Have they offered you advice with respect to the negotiations?

A Since July 9th?

Q Before or since?

A Before they did, yes.

Q Before you went into the meeting?

A Yes.

Q Since?

A No.

Q Did a time come when Cantor, Fitzgerald refused to provide further margin loans to D-Z?

A I think they said they were at a point where they couldn't handle any more financing.

Q When?

A Sometime in June.

Q The middle of June, end of June?

A I don't know.

* * *

(Question read)

A What was what?

Q The time when Cantor, Fitzgerald told you that they would not provide further margin financing themselves?

A Whenever we reached close to 100,000 shares, whatever that date is. I think it is much before that date.

Q Did they say why?

A As it relates to some of their capital requirements, I think, I am not sure.

Q That's your best recollection?

A Yes.

Q Do you recall any other reason?

A No.

Q Had they previously indicated to you that they would not provide further margin financing once you reached approximately 100,000 shares?

A Yes.

Q When did they first so indicate?

A About the time we started purchasing.

Q April?

A Yes.

Q Now, you have testified that subsequent to the termination of your negotiations with CNA, you

decided to accumulate 300,000 plus shares of NJB?

A Yes.

Q How did you plan to pay for those shares?

A How did I plan to pay for them?

Q Yes.

A With money.

Q And how did you plan to obtain the money?

A At first, I thought I would put up my own money.

Q How much?

A It was all calculated. We would need about a million one.

Q Who calculated it?

A I did.

Q Anybody else help you or discuss it with you at that time?

A I think I did the calculation at Cantor, Fitzgerald's office. I don't know whether they helped me with them. It is a simple mathematical calculation.

Q Is this the same day that the April 12th -- that CNA terminated?

A Yes.

Q So that same day, you are now meeting with Cantor, Fitzgerald, is that correct?

A I was in their office, yes.

Q Here in New York?

A Yes.

Q You and who else?

A Jarrin Levison, Bernie Cantor, Bill Miller, Larry Orbe, I am not sure whether the lawyers from Rubin Wachtel were there.

Q Okay. What was discussed about the source of the million one?

A Nothing except that I said I would try and put up my own money.

Q Was it discussed where the rest of the money would come from to purchase upwards of 300,000 shares?

A We would assume we buy it on margin. That was my assumption. So 50 percent of two million two is one million one.

Q And was it calculated and discussed at that time that two million two would purchase approximately 300,000 or more shares?

A I calculated it, right.

Q And did you express, vocally, that calculation?

A Yes.

Q Did anybody express any disagreement with him?

A No.

Q It was generally accepted, is that correct?

A Yes.

Q Was any other alternative source of financing calculated at that time?

A No.

Q Did the time come when you changed your mind about yourself putting in the million one?

A Yes.

Q How long after April 12th?

A That day.

Q Where?

A In New York.

Q After the meeting or still during the meeting?

A After the meeting.

* * *

Q Now, Mr. Davis, you say that immediately after the meeting of April 12th at Cantor, Fitzgerald, you changed your mind as to putting in the million one hundred thousand dollars yourself.

Would you tell me what, if anything, happened to cause you to change your mind?

A The discussions with Mr. Sol Becker. He felt maybe it would be better off if we didn't use our own funds but that we sought outside financing.

Q Did he say why?

A We just had general discussion for use of funds, et cetera, tying up the company's assets, et cetera.

Q Anything else said as to why you should not use your own funds?

A No.

Q Was anything said as to where you would seek to go to outside firms?

A Jerome Zimmerman, an associate of mine in Atlanta, had been interested in coming in, and he felt he could raise the money, and it was my opinion, and Saul Becker's that we should explore that.

Q When did you have this discussion with Mr. Becker on April 12th?

A About 6:00 o'clock in the afternoon.

Q Was that on the telephone?

A No. He was here.

Q He was here?

A Yes, with me.

Q At the meeting?

A I believe he was.

Q You didn't identify him as one of the participants at the meeting?

A I should have. It is an error. He was there.

Q We can add Mr. Becker to the five other

people who were present at the meeting at Cantor, Fitzgerald, is that correct?

A That's correct.

Q Do you recall anything else about your discussion with Mr. Becker about not putting in your own funds, but getting Mr. Zimmerman to come up with the money?

A No.

Q Did you communicate that decision at that time to any of the gentlemen from Cantor, Fitzgerald?

A No.

Q Did you communicate that decision to Mr. Levison?

A No. He was no longer here.

Q Did you ever communicate that decision to Cantor, Fitzgerald?

A Yes, subsequently. I don't know what date, but we said, we were seeking outside investors.

Q When was that in relation to April 12th, shortly thereafter?

A Probably around the 20th something, 26th, something like that.

Q Who did you speak with?

A I spoke generally with Bill Miller.

Q Tell me to your best recollection what you told to Mr. Miller about seeking outside investors?

A I told him at that time, it was just casual.

Q Tell me your best recollection.

A That we -- Mr. Zimmerman was coming in, because he was going to raise the money.

Q Anything else?

A No.

Q Did you tell Mr. Miller whether it was Mr. Zimmerman's own money?

A No.

Q Did you indicate to him that he was going to get various investors?

A No.

Q What did you tell him?

A Just what I told you.

Q Did you discuss the matter with Mr. Orbe?

A No.

MR. WILD: At what time?

A At that time I assume.

Q Let's say within the 10 day period after April 12th?

A No. The first knowledge they had was the 13(d) I sent.

Q Are you talking about the original 13(d) which

has been marked Defendant Trustee's Exhibit 1 for identification?

A The original filing. I believe dated May 3rd, I believe.

Q Did a time come when a "Private placement memorandum" was prepared?

A Yes.

Q Prepared?

A Yes.

Q Was that April 24th?

A That week, I don't know the exact date.

Q Was a copy of that ever furnished to Cantor, Fitzgerald?

A I don't recall.

Q ONe way or the other?

A That's right.

Q Did you ever give them a copy?

A I don't remember if I did.

Q One way or the other?

A That's correct.

Q Did you ever instruct anybody to give them a copy?

A No.

Q What is the basis of your testimony that the first -- that Cantor, Fitzgerald knew about Mr. Zimmerman's

financing plan was when they received the original 13(d)?

A Because when they got it, they called me, and they felt that they would -- they inquired as to what the plan was.

Q Who called you?

A Bill Miller.

Q And tell me to the best of your recollection, what was said?

A I told him basically that we had sold those notes with the idea that we eventually were going to convert it to stock, possibly on an issue; as is stated in the memorandum.

Q Did you tell him anything else?

A No.

Q Did he ask you how many of the notes you were planning to sell?

A We told him, I believe I told him I was going to raise a million two fifty.

Q Did you tell him in what units you were going to raise it?

A I might have told him $50,000 units, I don't recall.

Q Did he raise any question as to your plan?

A No.

Q Did he raise any question as to the legality

of the sale of such quantities of notes?

A No. I don't think so.

Q Did he ask you any questions as to how he was going about selling them?

A No.

Q Did you volunteer any?

A No.

Q Did you volunteer how the notes were going, were going slowly, what kind of success was being had?

A No.

Q How soon after April 12th when you decided to turn to Mr. Zimmerman was this fact communicated to Mr. Zimmerman?

MR. WILD: I object to the form of the question.

A The following week.

MR. WILD: How soon after -- if the witness understands the question.

A I understand. It was that weekend or Monday, we had a meeting.

Q Who?

A Saul Becker, myself and Zimmerman.

Q Where?

A In my office, probably.

Q Tell me your best recollection what was

discussed?

A I outlined the plan, basically how much I thought we needed to raise, how I --

Q A million and a quarter?

A That's correct.

Q What else was said?

A Generally, that was it. He would get half -- his deal was, he gets a right to buy half for raising the money, and I will do all the rest of the work.

Q Was there any discussion of legalities?

A No. We had our attorney.

Q At that meeting?

A No, at the next meeting.

Q Let's go to the first meeting now. You are back in Atlanta approximately the month after April 12th, yourself, Mr. Becker, Mr. Zimmerman, was there any discussion about legalities?

A No.

Q Do you recall anything else that was discussed?

A No.

Q When is the next meeting?

A Shortly thereafter, we met at the attorney's office.

Q Who was that?

A Zimmerman, myself Jarrin Levison, and David Rock, both of those, the last two are attorneys.

Q Who prepared the private placement memorandum, referring to Defendant's Exhibit 5 for identification?

A Haas, Holland, Levison & Gibert, it is a law firm in Atlanta.

Q Who supplied the information?

A Zimmerman, and myself.

Q You referred to a conversation with Mr. Miller in which you described to him, and I don't have your precise words, but something about people having the right to convert to equity as set forth in this memorandum?

A In other words, re --

Q Would you explain what you were referring to?

A We contemplated that the notes would be -- the people would have a right to convert their notes to stock and debt, through a public offering that would be made. My terminology may not be completely accurate, but that's the gist of it.

Q You had people buying $50,000 notes, is that correct?

A They were lending $50,000 unsecured promissory notes to D-Z.

Q And you are saying that you contemplated that

these people would have the right to convert that $50,000 into what?

A We contemplated that which would issue a public offering wherein they could return their note for stock and notes of D-Z.

Q Okay, and are the stock and notes of D-Z those which are referred to as being planned in the section of Exhibit 5 for identification which begins at the bottom of page 7 under the caption "Issue of units under small issue registration?"

A Whatever it says.

Q Are those the stocks and notes you are talking about?

A Yes.

Q And that's a combination of a $45,000 two year promissory note plus four shares of common stock of D-Z, is that correct?

MR. WILD: Whatever the document shows.

A Whatever is embodied in here. This is prepared by the attorney, and we followed them.

* * *

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Mr. Davis, was it your understanding that a person who was to purchase a $50,000 promissory note at the inception, was to be given the right upon the occurrence of the offering described in Defendant Trustee's Exhibit 5 for identification, beginning at the bottom of page 7, to turn in his $50,000 note, and receive in exchange therefor a new $45,000 note plus four shares of the common stock of D-Z?

MR. WILD: My objection to that is not what his understanding was, at the time, but what ultimately transpired.

MR. WACHTELL: I am entitled to get the witness' understanding at the time, and I insist upon getting it.

MR. WILD: I object to the form of the question. The witness may answer.

A Without using the wrong terminology, you are correct, that -- if we had that small issue, whatever you call it, under Georgia law, where we would issue these stock andnotes, then they would have the right, if we offered it to exchange it.

Q Do you recall any discussions as to whether the private placement memorandum or the notes should recite this right?

MR. WILD: I beg your pardon.

A I can only say this. As it relates to the entire offering, it was done under the guidance of counsel, with direct instructions what could and could not be done, and to the best of my knowledge, everything that was transmitted from them to us was followed.

Q You are not following my question.

A That's the only answer I can give you.

Q Was there any discussion about there being any reason why this right that you have described, to turn in one note to get something else, if another offer was made, was not to be included in the memorandum, Exhibit 5, or in the notes?

A Not that I recall.

Q You understand my question. You do recall any discussion as to whether or not this right should be mentioned, is that correct?

A It is mentioned.

Q Would you show me where in the private placement memorandum you see any reference to a person who buys the initial $50,000 note having any such right?

MR. WILD: Mr. Wachtell, the document will speak for itself.

MR. WACHTELL: Yes, it does, but I am trying --

A If it doesn't say it in the document, it wasn't put inthere for some purpose.

Q That's my question. Do you recallthere having been any discussion about any purpose for not putting it in?

A No.

Q Did you read the memorandum at the time?

A Yes.

Q Did D-Z, or yourself or Mr. Zimmerman, receive any instructions as to how it should comport itself or how you or Mr. Zimmerman should comport themselves in seeking to sell these $50,000 notes?

A Yes.

Q Were these instructions oral or in writing?

A Oral.

Q And would you tell me to the best of your recollection, what those instructions were?

A I don't -- I paid very little attention.

The comments were directed primarily at the meeting where the instructions were given, it was Saul Becker, Jerome Zimmerman and myself and I quite frankly was not too much concerned, because I had no intention of seeking people to buy the notes. But I know that Mr. Zimmerman, and Mr. Becker were very concerned that they followed the letter of the law, whatever that was.

Q Did you observe either of them taking any notes as to the instructions?

A I don't recall.

Q One way or the other?

A I just don't recall. Although Zimmerman might have written some memos, on a scrap of scrap piece of paper.

* * *

Q Do you have any recollection of any of the instructions?

A The only thing I can recall is that they wanted -- the lawyers wanted to make sure that when Zimmerman talked to the people, they displayed and reviewed with them in detail the private placement memorandum, went over the notes; they fully understood what was going on.

Q Was there a discussion in connection with letting the people who were going to invest fully understand and know what was going on, was there a discussion as to not telling them the name of the target company?

A Yes.

Q Tell me what was said?

A We were advised at the time, because we all had no experience in securities, at least I had none, that should we let it out, what the name of it is, some people may buy it, and if there is a future tender or what not, or people may think that they got profits that they weren't supposed to get, we would violate some laws. So it was agreed that no name of a trust would be given until the 13(d) was filed and it was public knowledge.

(Record read.)

Q What was public knowledge?

A The name of the trust.

Q That what?

A That we had bought stock in.

Q Was that 13(d) going to disclose how much more stock you were going to buy, was that discussed?

A No.

Q Was there any discussion as to whether the 13(d) would have to disclose whether you were going to buy more stock?

A No, there was no discussion.

Q Was there any discussion of how somebody could make an intelligent decision whether to invest money if you didn't know what company you were going for?

A No, there was no discussion.

Q Did the lawyers say that under the Securities Laws you are obliged to furnish investors with this kind of information?

A Quite the contrary. I think they put in here that we weren't telling them the name.

Q That is the lawyer's idea?

A Certainly. It was not ours.

Q You didn't suggest it?

A No.

Q Mr. Zimmerman did not suggest it?

A No.

Q Mr. Becker didn't suggest it?

A That is correct.

Q None of you suggested that you put it in, it would be all over the world in a short time?

A I could care -- from a practical point, I couldn't care less, but it was a legal standpoint that they were worried about.

Q Did you suggest to the lawyers in words or substance, "Why can't we tell the people who were investing, and tell them not to tell anyone else"?

A No. In this area, we let the lawyers call all the shots.

Q Did you tell them "Why can't we tell the people who were going to invest, and tell them they can't run into the market and buy NJB?"

A As I said, we were following the instructions of the lawyers.

Q Did D-Z, when it was formed, own anything and proceed to buy anything other than NJB?

A When it was formed?

Q Yes.

A If it owned anything, it was of minor nature.

I would say in aggregate, if it owned anything, maybe a couple of hundred dollars, $400, maybe a thousand dollars. Certainly no more than that.

Q Did it buy anything other than NJB stock?

A Yes.

Q When?

A For a period beginning from about March, I think.

Q It was only formed on April 23, is that correct?

A When I say that, it bought stock that I had bought.

Q It bought from you?

A Yes.

Q What did it buy?

A A hundred shares of Fidelity Mortgage Investors.

Q Total price?

A $600.

Q Anything else that it bought?

A What period are you talking about? It is not major, I --

Q Let's take the period the last two weeks of April, and the month of May.

A I will tell you, other than NJB, they own a hundred

shares of Palomar Mortgage Investors.

Q Total purchase price?

A Three hundred odd dollars.

They own a hundred shares of Hawthorne Financial Savings; another $600.

They own a hundred shares, I think; I am not sure now, Galbraith Mortgage, I am not sure about that. That is the only one I am not certain about. And they own a hundred shares of Prime Motor Inns, which I think they paid $300 for.

Q Did D-Z buy Prime from you?

A No.

Q Bought it in the market?

A They bought it from a nominee of mine.

Q From a nominee of yours?

A Yes, that is correct.

Q So, it was your stock?

A That is correct.

Q When did D-Z buy it?

A April or May; I am not certain.

Q What was the purpose of D-Z buying it?

A Well, we agreed to take a position in NJB, and since NJB was so heavily involved with Prime, I wanted to get the financial data from Prime, notices of meetings,

et cetera.

Q And Galbraith, when was that purchased?

A If it was purchased.

Q If.

A About March or April.

Q When was it purchased by D-Z from you?

A If the stock was purchased by me, prior to the formation of D-Z, then just shortly after D-Z was formed, it purchased it from them.

Q Let me see if I understand. Is it fair to summarize that other than approximately $2,000 worth of purchases of certain groups of a hundred shares worth of stock in certain entities from you, the sole investment of D-Z has been NJB?

A That is correct.

MR. WILD: Him or his nominee.

MR. WACHTELL: Yes, him or his nominee.

Q Now, in this discussion about an instruction about how to go about trying to sell the notes, was anything said about a limit on the number of persons who could be contracted?

A I think there was, but I don't remember the number. I am certain it was more than the number of people you could sell, but I don't remember the number.

Q Did Mr. Zimmerman say anything on that subject in order to come up with 25 people whom he anticipated he would have to talk to?

A No.

Q Did anybody else say anything on that subject?

A I thinkthe lawyers instructed him not to see or hear again, I don't recall definitively, they instructed something along that line.

Q You don't recall the number?

A No, because I think under -- the only number I do recall is that you could sell -- we put 25, that we would sell, but I think under the law, you could sell 35. Now, how many people you are allowed, I don't know.

Q Who told you that?

A My best recollection is the attorneys.

Q Did they say what law?

A Georgia law.

Q Did they say anything about Federal law?

A I think they said we were exempt from Federal.

Q Did you recall any basis upon which they said you were exempt from Federal law?

A They quoted some sections.

Q If you don't use the phone, and you don't use the mails, you are exempt from Federal law?

A No, I don't recall that.

Q Did they say if you hold all your meetings face to face, and give a memorandum, and go down it carefully, and use the mails, and then you are exempt from Federal law, does that ring a bell?

A I don't recall that. I know they did say if you went out of the state to see somebody, it was okay.

Q It was okay?

A Yes, because we asked, we asked, somebody wanted to go outside of the state, they wanted, and they said okay.

Q Did you have somebody particularly in mind?

A It was Becker or Zimmerman, somebody asked.

Q Did he mention a name?

A No.

Q Do you have any recollection whatsoever as to the basis upon which anybody was saying that these sales would be exempt from Federal law?

A As I say, the lawyers quoted some Georgia regulations and some Federal regulations. As a matter of fact, I think they embody them in here, and that is based --

Q Would you show me what you are referring to, and see if that refreshes your recollection?

A Let's see here. They talk about what we are going to issue later; under the Georgia securities -- pursuant to Section 5(d) of the Georgia Securities Act for 1975, which is known as Small Issue Registration --

Q You are now referring to that portion of Exhibit 5 for identification which refers to the contemplated future issue of $45,000 notes plus four shares of stock units?

A Right.

Q I am asking you with respect to the initial offering of $50,000 notes, do you have any recollection of anything said by the lawyers as to why it would be exempt from Federal law?

A They said that those promissory notes were exempt, otherwise they would have gone through with this.

Q You don't recall anything that was said as to why they were exempt, is that correct?

MR. WILD: He told you several things?

A Yes, it says here, promissory note is -- you could read it yourself.

Q Could I see the language you are referring to?

A In this paragraph.

Q You are now talking about Exhibit 2, which is form of promissory note to Exhibit 5 for identification?

A Yes.

Q "This promissory note is a security within the meaning of the Federal and Georgia securities laws. It has not been registered under the Federal Securities Act or the Securities Act of any state. This promissory note is being acquired by the holder for investment purposes only, and not for resale," et cetera.

Does that refresh your recollection on anything that was said to you at that meeting as to why --

A Why did you stop the et cetera? Okay. Here is what he says.

Q You tell me your recollection of the conversation, what was said as to why the sale of the notes would be exempt under Federal Law?

A I think if you just read what it says, nothing could speak higher than that, my good friend.

Q No, Mr. Davis, I would like to have your answer, of your recollection.

A I am going to read, because that is my recollection. Respect to this promissory note is then in effect on exemption from such registration requirements as then in

fact applicable to such promissory notes.

Q The section you are reading, Mr. Davis, if you look at it, refers to a possible future resale of the promissory note.

A No, it doesn't.

Q Well, read the language, I think you will see that it does.

A They are only saying that if it is sold, it has to be resold --

Q If it is resold?

A Yes.

Q I am going back to the question of your original sale of these promissory notes to these investors. Do you recall anything ever said as to why the transaction was supposedly exempt from Federal law?

A Without being argumentative, the opinion of our counsel was that they were not necessary to be registered; whatever section of the law he quoted, and I, as well as Zimmerman, followed his guidelines.

Q Have you ever gotten a written opinion of counsel as to the legality of the offer?

A They prepared it, as I say, that is pretty high -- I would say that is good enough for us.

Q Please, Mr. Davis, I would like an answer.

A There is their written opinion.

Q That is not a written opinion of counsel. Has there ever been a written opinion of any counsel as to the legality of that offer?

MR. WILD: If he knows what a written opinion of counsel is.

A I don't recall.

MR. WACHTELL: I have a much-too-high opinion of Mr. Davis' intelligence to which to dignify that comment by further comment.

A We may have it. It could probably be gotten, I don't know.

MR. WACHTELL: Mr. Wild, do you know of any? I called for the production of any opinion of counsel on this previously.

THE WITNESS: Then it wasn't.

MR. WILD: Mr. Sheinberg indicates that he is not aware of any.

THE WITNESS: I guess we didn't.

MR. WACHTELL: I am going to reiterate my call for the production of any opinion of counsel as to the legality of this offering.

Q Mr. Davis, do you know whether no-action letter was ever sought by D-Z or on its behalf from the Securities

Exchange Commission with respect to the legality of this offer?

MR. WILD: If he knows what a no-action letter is, I will permit him to answer.

A I don't think we ever sought any.

Q Do you recall whether there was any discussion of the possibility of seeking a no-action letter from the Securities & Exchange Commission?

A There was no discussion, to my knowledge.

* * *

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Q Mr. Davis, has D-Z or any representative of D-Z ever received any communication to your knowledge, or information from the Securities & Exchange Commission with respect to this offering of notes to investors or with respect to the accuracy of any figure by D-Z?

A No.

Q At this discussion at which instructions were being given as to how the noteholders should be approached, were any instructions given --

MR. WILD: Prospective noteholders.

MR. WACHTELL: I will accept that.

Q I will reword it.

At this meeting, at which instructions were

being given as to how D-Z should comport itself in seeking to obtain purchases for these $50,000 notes, was any instruction given as to the necessity or desirability of a record being maintained of all persons who were contacted as part of that effort to sell the notes?

A Not to my recollection.

Q Do you have any knowledge or information as to whether any such record was in fact maintained?

A I have no knowledge of it.

Q Do you have any information?

A No.

Q One way or the other?

A No.

Q Was there any discussion at that meeting at which you say the lawyers mentioned some number of persons, some ceiling number above which contacts should not be made, was there any discussion as to the desirability of a record being maintained of all persons who were contacted?

MR. WILD: I object to the preamble. I will allow the witness to answer the question.

A Not that I remember.

Q At the time that Exhibit 5 for identification

was being written, was it your understanding that the future offering of units, $45,000 notes, $5,000 stock would be a total offering of a million and a quarter?

A I really don't -- I have no recollection of -- I never thought about it, quite frankly.

Q One way or the other?

A One way or the other.

Q It may have been more?

A Oh, no, I know it wouldn't be more.

Q That is my question.

A It could have been less.

Q You say notwithstanding your contemplation that the persons would hopefully purchase a million and a quarter dollars worth of stock who were going to purchase the original notes would have the right to turn those in for the new units if you went ahead with the new offering, that you contemplated that the new offering might be for less than a million and a quarter?

MR. WILD: I object to the question.

A That wasn't the question. You say what did I think. I didn't really think.

Q Did you have any contemplation of what the dollar amount would be of the new proposed contemplation new offer?

A Yes, a million and a quarter. However, I didn't give it any thought at the time. We assumed he would be successful, Mr. Zimmerman, in raising a million and a quarter.

Q My question is, you didn't give any consideration to a larger offering of new units?

A Nothing larger, that is for sure.

Q The new units were designed to replace the original notes, is that correct?

A They were intended to do that, yes.

Q Now, at the time of the preparation of Exhibit 5 for identification, did you give any consideration as to how D-Z would ultimately repay the $2 million plus that would be required to repay the twenty-five $45,000 notes?

A How did you get up to two million?

Q Excuse me. It is late in the evening. I will try again.

At the time that Exhibit 5 for identification was being prepared, did you give any consideration as to how D-Z would ultimately repay the twenty-five, $45,000 notes that it was contemplating to issue on the replacement units, if I may call them that?

A No.

Q None whatsoever, is that correct?

A That is correct.

MR. WILD: You used "replacement units," you are referring to the --

MR. WACHTELL: The issue referred beginning at the bottom of page 7 of Exhibit 5 for identification.

Q Did you communicate with any person regarding that person's willingness or possible willingness to purchase one of the $50 000 notes?

A Yes.

Q Would you tell me the name of every person with whom you thus communicated?

A I communicated with -- actually, he communicated with me, Mr. Bernard Kroll.

Q Anybody else?

A Are you talking about anybody who purchased or anybody at all?

Q Anybody at all; in the whole world, with whom you had any conversation, formal, informal, fleeting, over drinks, any circumstances whatsoever, in which you mentioned to that person, that there was in existence the possibility of investing in this enterprise, and purchasing notes in those words or in substance?

A I met with a fellow named Leonard Schindell.

Q Anybody else?

A No. No, he was covered elsewhere --

Q I am not talking about anybody covered elsewhere. Anybody you talked to on the subject, whether anybody else talked to him or not.

A I talked to him, I referred to him previously. Mr. Lou Spear, he was one of the sources. That is immaterial. Go ahead.

Q Is there anybody else other than Mr. Kroll, Mr. Schindell and Mr. Spear with whom you had conversation of any respect whatsoever about the possibility of their investing in this enterprise?

A Not to my knowledge -- wait a minute. You skipped now. You are backing up. Are you going from what date?

Q From April 12 of 1974, did you ever have any conversation with anybody prior to that date, about the possibility of their investing?

A Yes, we went over that before.

Q Other than you previously testified?

A No.

Q That is CNA, is that correct?

A Right.

Q Anybody else?

A Not that I haven't testified to.

Q Did you mention to anybody in Atlanta that you and Zimmerman might have a good deal coming up?

A No, that was Zimmerman's function, not mine.

Q Did you mention to any of the people in 14th Street Investment, any of the people who had previously invested in that, that you and Zimmerman had another good one coming down the pike, or words to that effect?

A That Zimmerman's.

Q Did Mr. Zimmerman do that, to your knowledge?

A Yes, I would assume so, some of those same people invested in these notes.

MR. WILD: I object to the characterization of what Mr. Zimmerman may have said outside of the witness' presence.

A I was not present at any of the presentations that Mr. Zimmerman made.

Q Do you have any knowledge or information, and by that --

A Excuse me, I would like to make one more. Mr. Larry Taratto, who I spoke to with Mr. Zimmerman.

Q Do you have any knowledge or information about

whether either of the Mr. Beckers communicated with any person whatsoever about the possibility of their investing in D-Z?

A Yes.

Q Tell me everything you know first as to anything that Mr. Saul Becker did on that score?

A I don't know anything that he did. I thought you asked do I know who they communicated with.

Q Yes.

A Dr. Feinman.

Q Anybody else?

A One other gentleman, and I don't know his name. I believe he was -- I don't know, he was a friend of Dr. Feinman's, I don't know.

Q When you say they, is it your understanding that Ralph and Saul Becker did this together or one or the other?

A One or the other. I don't know.

Q What is the basis of your understanding?

A Their conversation with me.

Q And what did they say?

A They said that they had spoken to these people.

Q When?

A In June, I think. They also talked to a fellow

named Roy Baker.

Q Anybody else?

A They were with me at the -- at that Schiendell meeting.

Q Anybody else?

A And they were with me with Lou Spear.

Q Anybody else?

A There was a fellow they mentioned from the Arundel Corporation, but I don't know if they ever spoke to him.

Q Did they say that they intended doing so?

A Yes, he is a relative of theirs.

Q You don't recall his name?

A No.

Q Do you have any knowledge or information or understanding as to anybody else contacted by either Saul Becker or Ralph Becker informally or formally, indirectly or directly as to the potentiality of their investing in D-Z?

A You might as well put a fellow named Buzz Winer, he is their next door neighbor.

Q Did they indicate that they were intending to talk to?

A I asked them to.

Q With respect to Mr. Zimmerman, would you tell me the names of all persons that you have any knowledge or information, belief or understanding, that were contacted by Mr. Zimmerman directly or indirectly, with a view toward possibly investing in D-Z?

A Well, other than those listed in the 13(d) --

Q Which is everybody other than Feinman, is that correct?

MR. WILD: Feinman is in the 13(d).

MR. WACHTELL: He is in the third amendment.

Q Is that everybody in the last amendment, in Amendment No. 3, to the 13(d), other than Security, other than Zimmerman himself, and other than Feinman?

A Yes. Outside that, there was Taratto, I told you about.

Q Anybody else?

A And according to your own action, Sanford Orkin, that I didn't know about --

Q Would you spell that, please?

A O-r-k-i-n. I saw you put that nice phrase in there. He is the pest control man.

Q The fellow who smelled a rat.

A Other than that, I think that is it. We should all

smell rats like him. $65 million he sold out. He sold out for $65 million, you should have rats like that.

Q I think you are misinterpreting, Mr. Orkin had business accumen not to invest in your enterprise, Mr. Davis?

MR. WILD: He only buys rats.

Q Let's proceed.

Do you have any knowledge or information of anybody else's having been contacted by Mr. Zimmerman?

A No.

Q Did anybody other than yourself, the two Beckers, and Zimmerman, to your knowledge or information communicate with any person, directly or indirectly, formally or informally, with respect to possible investment in D-Z?

A No.

* * *

Q Do you have any knowledge of anybody else having communicated with anybody on this subject?

A No.

MR. WILD: The question was investing.

Q In your conversation with Mr. Schiendel, let's take Mr. Kroll first, you say Mr. Kroll called you?

A Yes.

Q And what did he say?

A He is a very close friend of mine. He was contemplating investing, and what did I think.

Q What did you tell him?

A I said I think it is good.

Q Did Mr. Kroll indicate how much he was con-

templating investing?

A No.

Q Mr. Kroll flatly invested a hundred thousand dollars, is that correct?

A Yes.

Q He originally invested $50,000, and then he invested a second $50,000, is that correct?

A Yes.

Q Do you recall the circumstances which led to two separate investments?

A No.

Q Do you recall whether he intended at the outset to invest a hundred thousand dollars?

A No.

Q Did you in your conversation with Mr. Kroll tell him anything other than that it was a good deal or words to that effect?

A I don't recall telling him anything else.

Q Did you tell him how he would make a profit?

A I don't recall telling him.

Q Did you tell him that -- did Mr. Kroll say to you in words or substance, what is such a good deal about lending $50,000 unsecured for six months, payable in March, with a call, without penalty?

A No.

Q Did you discuss with Mr. Kroll the fact that he would end up with equity in the company?

A No.

Q Did you tell him anything other than it is a good deal?

A I don't think you understand. I answered it one way. My answer stays the same. You can ask me 22 times.

Q I didn't ask you for any particulars, and you didn't give him any particulars, that is correct?

A Mr. Wachtell, I will answer it, I told you exactly what I told him.

Q Did you tell him that it was contemplated that he would pay $1250 for each share of stock and you paid a hundred dollars for each share of yours?

A Mr. Wachtell, I repeat, I told him nothing but it was a good deal.

Q You didn't tell your good friend that he was going to end up paying 12-1/2 times for each share of stock that you paid, is that correct?

A I would say I didn't tell him, but he thought probably I wasn't paying anything.

MR. WILD: Objection.

* * *

Q Now, Mr. Schiendel, who is he?

A He is an officer of a company called Jewelcor.

Q Where does he live?

A I don't know.

Q What city?

A I assume New York, maybe New Jersey.

Q When did you communicate with him?

A In June sometime.

Q How?

A Saul Becker arranged the appointment.

Q Did you meet with Mr. Schindell in person or --

A In person.

Q Where?

A At his office.

Q Where?

A In Manhattan, I don't know the address.

Q Can you fix the date?

A In June sometime. After the meeting, but before July 1.

MR. WILD: After what meeting, the July 13 meeting?

THE WITNESS: The July 13 meeting.

Q Referring to the stockholders meeting of NJB?

A Yes.

Q Who was present at the meeting?

A Mr. Saul and Ralph Becker, myself, and three gentlemen from Jewelcor who I don't remember their names.

Q What was said?

A Generally my concept of the trust.

Q Anything else?

A Just what we were doing.

Q Tell me what you said?

A We were in the process of accumulating stock.

Q Anything else?

A We gave him a financial statement on NJB.

Q Anything else?

A I don't recall whether he was given any of this material. I didn't give it to him at least.

Q Referring to Exhibit 5 for identification?

A Yes.

Q What was said about the potentiality of Mr. Schiendell investing?

A We outlined it, and he said he would think about it, he wanted to talk to Cantor, Fitzgerald.

Q About whether he should invest, is that correct?

A No, about the general situation, about who we were; he doesn't know us.

Q Was there a discussion about what amount of money he might be prepared to invest?

A Upwardsof $400,000.

Q And was that to be in the form --

Was it being discussed that that would be in the form of these $50,000 promissory notes?

A Originally, it was intended, but the outcome was that it would not.

Q When you originally contacted him, it was your intent if he was interested he would buy one or more of the promissory notes?

A One is what I understand.

Q One is what you understood when you communicated with him, is that correct?

A Yes.

Q And when you sat down and met with him at the offices of Jewelcor, what did you say? Did you say "I want you to buy" --

A I didn't say anything. They wanted to know what we were doing, and I explained it, the concept.

Q Did the other three people present ask any questions, those were with the Jewelcor Corporation?

A Minor, if any. He is like -- his background was investments. And I think he handles that -- they are a

public-held company, and he handles, I guess, whatever dealings they have on the Stock Exchange.

Q Did you understand that this was to be an investment by Jewelcor or by Mr. Schiendell?

A By the individuals. Not by Schiendell at all. By, I was under the impression Schiendell and the other -- some executives of the company, I don't recall.

Q The three people who were present?

A It might have been, I don't know.

Q When you and Mr. Becker or either of the Beckers were arranging this appointment, did you have any discussion among yourselves as to how many of the $52,000 notes you might hope to sell in this manner?

A No.

Q But you understood it might have been Mr. Schiendell and a group of the executives at Jewelcor, is that correct?

A That is the way I understood it.

Q Did you come to New York especially for the meeting?

A No.

Q Do you have the names of the three other persons who were present?

MR. WILD: This witness just testified that he didn't know the names of the persons.

Q Do you have any notes, or do you know whether Mr. Becker or Mr. Ralph or Saul Becker has any note or memorandum which identifies the persons present?

A No, but I am sure they -- I think Saul knows at least one of them by name.

Q Did you discuss with these people how they would make a profit on the deal?

A Which people?

Q Mr. Schiendell, and the three other people from Jewelcor?

A I don't recall.

Q Did they ask how they were going to make a profit on a six percent promissory note payable in March of 1975, and callable prior thereto without premium?

A The fact that they could exchange it for the other securities, that would be conveniently issued.

Q That was discussed?

A I am pretty sure it was.

Q Did they ask any question as to how much other people had paid for the common stock?

MR. WILD: I beg your pardon.

Q Did they ask any question as to how much

other people had paid for the common stock?

A Meaning Zimmerman and myself.

Q You were the only people who owned some original stock?

A I thought common stock of some --

Q I wasn't talking about U. S. Steel, Mr. Davis.

A I think we outlined what we paid.

Q You did?

A Yes.

Q You said that you paid a hundred dollars each, is that correct?

A I believe we told him also that we bought --

MR. WILD: A hundred dollars a share.

A We paid $10,000 in cash, and I think we also indicated that we subscribed to notes.

MR. WILD: Let the record be clear on the point. Mr. Wachtell said a hundred dollars each.

MR. WACHTELL: A hundred dollars a share.

MR. WILD: Okay. I am satisfied with the record at this point.

Q Do you recall anything else that was discussed with Mr. Schiendell and the three other people?

A No.

Q Did you discuss with them how, if they exchanged for the new units, how D-Z ultimately intended to repay the money?

A No.

Q Did they ask?

A I don't recall.

Q What was the outcome of the discussion?

A They would think it over.

Q Has there been any further communication?

A Yes, we were unable to get together.

Q Mr. Spear, you have referred to, who is he?

A A lawyer from Chicago.

Q And when did you communicate with him about the potentiality of his buying a $50,000 note?

A June -- I didn't really communicate with him buying it, I asked him if he knew who might be interested in buying it, including himself, of course.

Q You are referring to his clients?

A He is not practicing any more. He is retired.

Q And what did he say?

A He said he would take it under advisement.

Q Did you indicate to him how many of them you had for sale?

A No.

Q Was there a reason why in June you were communicating with Mr. Schiendell and Mr. Spear in an area which you had previously indicated had been delegated to Mr. Zimmerman?

A Because Mr. Zimmerman was fading.

Q Tell me what happened?

A Just that.

Q What did he report to you?

A He was not having too much success on his end of it.

Q Well, Mr. Zimmerman sold, according to Amendment No. 3, $400,000 or $350,000 worth of these notes, is that correct?

A Whatever it was.

Q And I think you previously indicated to me that the only people you were aware of, that Mr. Zimmerman spoke with, other than actual purchases with Mr. Taratto, and Mr. Orkin?

A That is right.

Q Now, what was that, what was there that Mr. Zimmerman said to you, that gave rise to this feeling on your part, in or about June that he was fading?

A He said he was fading.

Q Tell me what he said.

A I called him on one of my occasions, and I said, the money is not coming in as I hoped. He said he is running into some difficulty selling the notes, and he like it cooled a little, and I said okay.

Q Did he say people don't want to buy them?

A No. He never said anything.

Q Did he say I have run out of people to call?

A No.

Q Did he say it is a tight money market, and people aren't investing in this kind of thing at that time?

A No.

Q He just said he is having difficulty selling them, is that correct?

A Yes.

Q Did you ask?

A no.

Q Did you say to him, look, you are part of the deal for which you got fifty percent of the equity was to come up with a million and a quarter, you have only come up with $350,000?

A Yes.

Q Did you say to him what about all these hundreds, every contract you have who you told me you

would be able to reach?

A Mr. Wachtell, come on, will you please?

MR. WILD: I object to the form of the question.

A You got to be bad.

Q Mr. Davis, when you were originally having your discussions on the subject with Mr. Zimmerman in April, or prior thereto, did Mr. Zimmerman indicate to you how he was going to go about getting $50,000 each from approximately 25 persons?

A Just calling upon some of his friends. A hundred and fifty one and the number.

Q Did he say to you he had that many friends?

A Gee whiz.

Q What did he say?

A He has demonstrated in the past.

Q How?

A The ability to raise money.

Q When did he demonstrate this to you or that you had knowledge of?

A Well, about two days on the 14th Street, which I know he testified previously to you, and you are aware of, he raised $450,000, before I could walk out the door.

Q From how many people?

A Ten people, I think, or 12; I don't really know. It was none of my concern, and another experience, where he didn't raise it, but it was in a position to come up with a million dollars, from ten people, on a real estate venture, so he had the capacity. He is well-regarded in the community.

Q Now --

A Plus he could write his own check, you know.

Q Was it ever discussed with him that he would write his own check?

A I never approached it to him.

Q Had that ever been discussed in the beginning that he would write his own check?

A No.

Q Did he offer to write his own check for six percent promissory notes, securities unsecured and callable in March of 1975, without penalty and subject to an exchange rate, nowhere appearing in the document, the -- to translate it for four shares of equity of 1250 shares, plus a new $45 promissory note?

A Yes.

Q He did express his own willingness?

A Yes.

Q On other than the $50,000?

A He expressed it time and time again.

Q He said I wanted to buy as many of these as I can get?

A No, because I wouldn't sell him as many as I could get.

Q When you were going around to Chicago and New York in June, did Mr. Zimmerman say , "Bruce", does he call you "Bruce?"

A He calls me Mr. Davis.

Q Did he say, "Mr. Davis, don't bother, I would be delighted to buy all these promissory notes myself?"

MR. WILD: Let it reflect when he called him Mr. Bruce, Mr. Davis, he was smiling.

MR. WACHTELL: I don't know whether he was facetious or not.

A What was the question?

Q I don't know how formal they get in Atlanta.

Did he say to you in words or substance, "Why are you bothering running all over the place, I will be very happy to buy them all myself?"

A No.

Q He just said I can't get people to buy them or words to that effect?

MR. WILD: I object to the form of the question.

And on the previous one, which the witness answered before I could object.

Q Let's get back to your conversation with Mr. Spear. The lawyer from Chicago, who you asked whether he knew of anybody who might be interested?

A No, I presented it to him, because he said he had people who might be interested.

Q When did he say that?

A At the meeting he had with, a sociable meeting he had with Ralph Becker.

Q Mr. Spear had a sociable meeting with Ralph Becker in Florida?

A Yes.

Q And Mr. Becker indicated to Mr. Spear that you had these notes for sale?

A No, he told him basically what we were doing. And Mr. Ralph Becker does not get into this, so he set up an appointment with Mr. Spear in Chicago.

Q Do you know where in Florida this was?

A Miami Beach.

Q At the hotel?

A No, they both have houses there -- no, he has an apartment, and Ralph has a house.

Q Does Ralph Becker know other people in

Florida?

A Yes.

Q How long did he spend in Florida?

A He goes down on the weekends, he has a house there.

Q Do you have any knowledge or information whether he had conversations with any of these other people in Florida, similar to the conversation that he had with Mr. Spear?

A No.

MR. WILD: If he knows what the conversation with Mr. Spear was.

Q Did you instruct him not to?

A I didn't instruct him not to have them or not to have him.

Q Did you hear anybody else instruct him not to have instructions of this nature?

A No.

Q Did he ever report to you that he indeed had any such conversations with any person in Florida other than Mr. Spear?

A No. Just the fact that he had talked to Mr. Spear.

Q And Mr. Spear indicated that he knew or might

know somebody or people who might be interested, is that correct?

A To help us out, yes.

Q What happened next with respect to Mr. Spear?

A After the Chicago meeting?

(continued on next page.)

Q No, after the Florida, did you go to Chicago?

A Yes.

Q You --

A I just told you, I met him in Chicago.

Q Did you go there for the purpose of meeting him?

A Yes.

Q What did --

A Two purposes, not just that. I went there for financing of some real estate, besides.

Q Now, what did you know about what Mr. Spear might or might be able to accomplish before you went to Chicago?

A Nothing.

Q You met with the man?

A Yes.

Q Who else was present?

A Saul Becker and Mel Unterman.

Q Who is he?

A An individual in Chicago.

Q Did you know him previously?

A No.

Q Had Mr. Spear brought him to the meeting?

A Yes.

Q What was said?

A I just outlined my concept again.

Q Was there a discussion about the $50,000 promissory notes?

A No.

Q Was there a discussion about anybody who was interested in buying any --

A I revealed to them the plan -- I am not sure, we even left a memorandum, I am not sure.

Q Do you have one there?

A I don't carry them around.

Q Had Mr. Spear been furnished with one previously?

A I don't remember.

Q Was there one in evidence?

A What?

Q Was there one on the table or being referred to or in front of any of the participants at the meeting?

A I don't recall.

Q Did Mr. Unterman discuss whether he was prepared to buy any of the $50,000 promissory notes?

A He made no overture, either way. Just listened.

Q Did he say anything?

A He thought it was an interesting concept.

Q What did Mr. Spear say?

A Not very much. The primary thing that we accomplished with Mr. Spear, he introduced us to a savings and loan, who is now negotiating to provide us with end loans for condominiums.

Q Did Mr. Spear during the course of the meeting or at the end thereof indicate what figure he would do to ascertain whether any other persons might be interested?

A No, he just said he would be back in touch with us.

Q Did he say whether he was interested in purchasing any of the $50,000 promissory notes?

A He was not interested.

Q He said he was not, is that correct?

A Hewas not or wasn't prepared, he was not going to invest --

Q But he said he would see if there was some other people he knew who might be?

A He indicated he might.

Q And how about Mr. Unterman, did he indicate whether he was prepared to invest?

A He did not indicate.

Q One way or the other?

A That's correct.

Q Did he say he would think about it?

A Yes.

Q Did he indicate whether he had had other people he would talk to?

A No, he wouldn't talk to anybody else. He was by himself, he wasn't speaking to bring in other people.

Q What was Mr. Unterman's business, do you know?

A He is a retired banker, as I understand it. I don't know, that's hearsay.

Q Did you ahave any discussion with Mr. Spear as to whether he would receive any compensation or recognition or anything if he brought in other people to buy the notes?

A He said he would not.

Q He said he would not?

A Yes.

Q Did he indicate why he would be doing this?

A Yes, as a personal favor to Ralph Becker.

Q Now, did anything come of any of those overtures?

A Nothing.

Q And we have Mr. Torrato, did you communicate with him?

A No -- well, I had lunch with him at the request of Jerome Zimmerman.

Q Where?

A Coach & 6 Restaurant.

Q Atlanta?

A Yes.

Q When?

A In May, to the best of my recollection.

Q What was decided?

A General outline, again, concept.

Q Whether he was interested in buying any of the notes?

A Yes. He wanted -- the way I remembered it, and he wanted more than what we were offering. In other words, he wanted a different deal than the $50,000 notes.

Q He didn't like 6 percent unsecured?

A He liked it. He just wanted more.

Q More notes or better terms?

A More on the conversion.

Q More on the conversion?

A Yes.

Q He didn't want to pay 1250 for what you were buying at $100, is that correct?

A That is not correct.

Q He wanted more shares. Tell me what he wanted?

A He did not say exactly what he wanted, but to quote him, rewards for risk. And I don't know what it meant, because he never defined it.

Q At the time -- but he didn't invest?

A He did not.

Q At the time you met with Mr. Tarottot, did you identify for him the target company?

A Yes.

Q Did you give him any financial information with respect to NJB?

A I only met him at the luncheon, so I gave nothing at the luncheon.

Q Do you have any knowledge or information that anybody else on behalf of D-Z gave him any financial information with respect to NJB?

A I have no knowledge.

Q When you met Mr. Spear and Mr. Unterman, did you give them any information with respect to NJB?

A I think I gave him the latest quarterly report.

Q Anything else?

A Not that I recall.

Q When you met with Mr. Schiendell, and the three other gentlemen from Jewelcor, did you give them any financial information with respect to NJB?

A I think the annual report and the quarterly.

Q Anything else?

A No.

MR. WACHTELL: Can we break at this point?

(Whereupon, the deposition was adjourned at 8:00 P.M.)

Subscribed and sworn to before me this _____day of July, 1974.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

D-Z INVESTMENT COMPANY,

Plaintiff,

vs.

ROBERT E. HOLLOWAY, MELVIN S. TAUB, MAURICE J. BRICK, PETER E. SIMON, NORMAN BRASSLER, CHARLES GILLER, HERBERT E. HARPER, DR. GORDON McKINLEY, JAMES R. MOSELEY, III, JACK G. TAYLOR, DALLAS S. TOWNSEND, JR., and, NJB PRIME INVESTORS,

Defendants,

74 Civ. 2379
(I.B.W.)

and

SECURITY MANAGEMENT CO., INC., CANTOR, FITZGERALD & CO., INC., BRUCE R. DAVIS, JEROME ZIMMERMAN, RALPH M. BECKER, SAUL BECKER, BERNARD KROLL, MAX SOPHIER, HAROLD LEVOW, HAROLD B. LEVIN, HARVEY JACOBSON, and SEYMOUR WEINBERG,

Additional Defendants
to Counterclaims

CONTINUED DEPOSITION of BRUCE R. DAVIS, taken pursuant to Notice and Adjournment, held at the offices of Wachtell, Lipton, Rosen & Katz, Esqs., 299 Park Avenue, New York, New York

BENJAMIN REPORTING SERVICE
5 Beekman Street
New York, New York 10038
374-1138

on the 23rd day of July, 1974 at 10:00 a.m. before Irwin H. Benjamin, a Notary Public of the State of New York.

o0o

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of Counsel

B R U C E D A V I S, having been first duly sworn, was examined and testified further as follows:

CONTINUED EXAMINATION

BY MR. SCHWARTZ:

Q Are you aware that you are still under oath?

A Yes.

Q You are aware then, that you are still under oath?

A Yes.

Q Yesterday, you testified that when the deal with CNA broke down sometime in the middle of April, there was a meeting in Atlanta among yourself, Mr. Zimmerman, Mr. Becker. I wonder if you could describe for us what occurred at that meeting.

A I think I reviewed with Mr. Zimmerman the type of accumulation program I had in mind, the dollars it would take, et cetera, as related to dollars, and I think -- in general the formation of D-Z as he related to --

MR. WILD: I would like the record to be clear when you are talking about the CNA matter, you are talking about the letter of intent that was entered into with Mr. Silverstein.

MR. SCHWARTZ: Right.

MR. WILD: There was no direct agreement of any sort or nature to which there has been any testimony between Mr. Davis and CNA.

Q You discussed --

MR. WILD: That is the context in which you asked the question, I assume, is that right?

MR. SCHWARTZ: Yes.

Q You discussed the formation of D-Z, what about the activities of D-Z when it was formed?

A The activities were the basis of my determination of how many dollars it would take to buy stock or controlling stock of NJB.

Q And how were the dollars in question to be raised?

A Mr. Zimmerman's function was in the transaction to raise the dollars.

Q And how was Mr. Zimmerman to raise the dollars?

A It was not discussed at that meeting.

Q There was no discussion relating to, for example, the issuance of the notes which were ultimately issued?

A No.

Q Was there a discussion of individuals or firms from whom funds might be raised?

A No.

Q Were there any discussions of prior dealings between yourself and Mr. Zimmerman in which Mr. Zimmerman had raised funds for any business purpose?

A No.

Q Was there a subsequent meeting with Mr. Zimmerman with respect to the activities of D-Z?

A Yes.

Q When was that?

A Either the latter part of the same week or shortly thereafter.

Q And what did you say was discussed at that meeting?

A How the funds would be raised.

Q And what was the substance of that discussion?

A It was directed by our attorney Jarvin Levison who set forth the method by which the money could be raised.

Q What did Mr. Levison say?

A It was his idea, and formulation of these notes.

Q Of these notes?

A The promissory notes.

Q Specifically to the best of your recollection, what did he say?

A That is exactly what he said.

Q You should have these notes, those were his words?

A It was his words that the fund-raising could be done through promissory notes.

Q Through the issuance of promissory notes by D-Z?

A That is right.

Q Mr. Levison, did he suggest terms that might be contained in those notes?

A I don't recall.

Q Did anybody else suggest terms that might be contained in those notes?

A I might have, I don't recall.

Q More specifically, did Mr. Zimmerman make any statement with respect to what he thought might be marketable?

A I don't recall.

Q Was there any discussion of the prevailing rate of interest at that time?

A No.

Q Did Mr. Levison make any comment as to how any notes that might be issued would be repaid?

A No.

Q Did anybody else in attendance in the meeting make any such suggestion?

A Not that I remember.

Q Was there any discussion had of the fact that notes by their nature had to be repaid?

A No.

Q No, there was no such discussion?

A No, there was no such discussion.

Q Were there any subsequent meetings held at which the subject of these notes were discussed?

A As they relate directly to the notes? Or just general conversation?

Q The question is pretty [illegible]r. Was there any subsequent meeting held at which the subject of these notes were discussed?

A There were many meetings --

Q What was the one after the one you just described at the office of counsel?

MR. WILD: Of course, if he is able to recall.

A I think it was related to when they prepared the actual note.

Q By the actual note, you mean the form of

note that is annexed to Defendant's Exhibit 5 for identification?

A Yes.

Q When was that meeting held?

A I think the subsequent week.

Q I just wanted to get my time frame straight. The initial meeting, this would put us in the week of the 19th or somewhere in there?

A Somewhere in there, right.

Q And what occurred at that meeting?

A We reviewed the note and the private placement memorandum. I think that is what it was called.

Q There was then a draft of both before you at that meeting?

A I believe that is correct.

Q Who had prepared that draft?

A Jarvin Levison.

Q Was the draft completed in respect to terms or was it left --

A I believe it was complete, but we had to make various changes.

Q Will you tell me the discussion that preceded the making of any changes that were made?

A None other that I believe he had some incorrect

figures, and some other typographical errors.

Q I want to understand very specifically here. Was the draft that Mr. Levison put before the meeting complete when it was presented by him as to terms?

A No.

Q It was not?

A No.

Q What discussion was then had in respect of such terms?

A The dollar amount was the only term that was incomplete.

Q By dollar amount, you are referring to what?

A A million fifty, and how many units.

Q Does that appear in the note?

A It appears in the placement memorandum.

Q I was asking with reference to the note.

A I would have to see a copy of the note.

Q The interest rate had then been filled in?

A I would like to see the note. I don't recall exactly, so if you let me see the note, I might recall.

* * *

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MR. SCHWARTZ: Let the record show that I am showing the witness Defendant Trustee's Exhibit 5

for identification, at his request.

THE WITNESS: I would think I would like to see the draft, I think that is the best of everything that would recall my memory even more.

Q Have you had the assistance of counsel in the arrangement of other financial transactions than this one?

A Yes.

Q Is it the ordinary practice that its counsel who determines the terms of the transaction, such as yield, maturity, price, and so on?

MR. WILD: Are you relating that to this transaction or to any other transaction?

MR. SCHWARTZ: I am relating it to this transaction. But the question refers to other transactions.

MR. WILD: Then I am objecting to the form of the question as it goes far beyond the scope of any area as to which discovery could possibly be proper in the answer. I would let the witness answer, nonetheless.

A I don't think lawyers usually set terms.

Q Who does usually set terms?

A Principals.

Q Who were the principals in the matter of the issuance of the notes by D-Z?

A Zimmerman and myself.

Q Did you and Mr. Zimmerman set the terms of this offering?

A As it relates to what?

MR. WILD: I object to the form of the question, insofar as it uses the word offer.

MR. SCHWARTZ: Your objection is noted.

A Are you talking about the six percent figure?

Q Well, I am talking about the terms of the offering. Are you saying, if you are suggesting by your answer that some of the terms was set by you, and some of them were not, I am asking you specifically: Was the interest rate determined by you principals to this transaction?

MR. WILD: Just a minute. I am not going to permit you to use the word "offering," and have him respond . I am going to object.

MR. SCHWARTZ: Would you suggest a word, Mr. Wild?

MR. WILD: Notes.

Q Notes. Mr. Witness?

A I think we were instrumental in the interest rate

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and maturity rate.

Q Instrumental?

A Yes, instrumental.

Q Well, does that suggest that others than you were involved in making that decision?

A No --

MR. WILD: Objection to the form of the question, I think it speaks for itself.

Q You were instrumental, to use your word, with respect to the interest rate, and the maturity date of the transaction?

A And the amount.

Q What discussion was had between you and Mr. Zimmerman at any time concerning the interest rate?

A Brief conversation at the time.

Q Brief conversation -- I didn't hear the end?

A At the time we had the note presented.

Q At the meeting you testified to in which the attorney presented a draft?

A Yes.

Q And what was said by you at that meeting with respect to the interest rate?

A I don't recall.

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Q What was said by Mr. Zimmerman?

A I don't recall.

Q With respect to the maturity date, what was said by you at that meeting?

A It was an arbitrary date fixed.

Q What was said by Mr. Zimmerman?

A Nothing that I can remember.

Q Was there any discussion had between you at that meeting with respect to the manner in which the notes would be repaid?

A No.

Q Did anyone raise the question at that meeting as to how the notes would be repaid?

A No.

* * *

Let's mark the draft of Defendant Trustee's Exhibit 5. This is a draft dated in pen April 24, 1974, with the words "Second Draft" on top: it is not paginated.

THE WITNESS: That is not the draft then. There was a first draft. Maybe you don't have it.

MR. SCHWARTZ: Let me have it marked. And headed "D-Z Investment Company, Private Placement Memorandum, for issuance of up to one million five hundred thousand dollars of six percent promissory notes due March 31, 1975.

(Document referred to was marked Defendant Trustee's Exhibit 16 for identification.)

Q I show you now, Defendant Trustee's Exhibit 16 for identification, then Defendant Trustee's Exhibit 5 for identification.

A All right. This is the one I marked up.

Q The question we had raised which led you to request the inspection of that document was whether or not when Mr. Levison presented the draft at the meeting which you previously testified to, it was complete as to the terms therein.

A The original meeting which you don't have that draft for some reason, is where the interest rate was

determined. And then I changed the dollar amount which is in my handwriting from $1,500,000 to $1,250,000. And I think the other changes are basically typos.

* * *

Q It is now your testimony that this is the draft that Mr. Levison presented at the meeting?

A Of the note.

Q Of the note?

A Yes.

Q Is it also the draft that was presented of the private placement memorandum?

A The second draft.

* * *

Excerpts from Deposition of Bruce R. Davis

A I said, the second draft, now, if there is a first draft, I don't have it.

Q Okay. Is it your testimony then, so we can move on, that you have no recollection of the subject of the interest rate which would be charged for these notes being discussed other than general recollection that it was discussed, no specific recollection as to what was said on that subject?

A In the first meeting.

Q In the meeting we are now examining about, namely the meeting that was held in Mr. Levison's office?

A That was the second meeting, because this was already prepared when we came to the second meeting, and also it already calls for six percent promissory note.

Q I know that.

A Obviously, we discussed it prior to this.

Q I see. I am trying to ask you about a meeting, not about a piece of paper, do you understand? I want to

know when the thing was first presented, do you have any recollection of the discussion of the interest rate?

A I say, I vaguely recollect the six percent.

Q Was there any discussion had as to the prevailing rate of interest at that meeting?

A No.

* * *

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Q I will repeat the question.

Did there come a time when there was discussion between you and Mr. Zimmerman as to what means other than the sale of the notes might be used to raise the funds necessary to accomplish your program?

A Yes.

Q And when was that time?

A Sometime in the latter part of June, I believe.

Q And what did Mr. Zimmerman say in that conversation?

A Nothing.

Q What did you say?

A I said since he seemed to be having some difficulty, I would have to seek raising the money possibly on my own, possibly through borrowings, rather than the notes.

Q Did Mr. Zimmerman make any suggestion as to where you might go to find other sources of financing?

A I believe he did mention he knew somebody, a foreign gentleman in New York, but I don't recall the name.

Q A foreign gentleman in New York?

A Yes.

Q I don't understand.

A Somebody represented some foreign interests.

Q And what foreign interest was he referring to?

A We never got into it.

Q Did you ever pursue that suggestion of his?

A No.

* * *

Q Did you talk to Mr. Zimmerman at the meeting which you are now testifying about the other sources which you might look, given the fact that he told you that the Atlanta note market was drying up?

A Other than what I previously testified to?

Q No, I am asking you to testify to a conversation which you have not previously testified to.

A Yes.

Q And what did you tell him -- what sources did you tell him you would be looking to?

A I think I informed him of several sources that I was looking to.

Q And what were those sources?

A Those are the two of them are the sources which are in the air right now, which you are going down to the judge to get a ruling on.

Q What are the others?

A Those were the only --

Q You said two of them, implying, I think that

there were others?

A I don't believe there were others. If I did, I led you astray. The two that I was working with.

Q Did you and he have any conversation then as to the chances of your being successful in obtaining additional financing?

A I think I made a positive statement that somehow I would work it out.

Q Did Mr. Zimmerman respond?

A No. Just wished me a lot of luck.

Q Did you and he then have any conversations as to how D-Z would pay off the notes which had previously been sold by Mr. Zimmerman?

A No.

Q Did Mr. Zimmerman express any concern about the possibility that they would not be repaid?

A No.

Q At the time at which Mr. Zimmerman indicated to you that the note route seemed to be blocked --

MR. WILD: Blocked being your word.

Q -- how much cash did D-Z have at this point?

A I don't really know.

Q Is there a financial statement of D-Z in existence?

A There is an early one, at the beginning of May. That is about it.

Q Is there one that would provide an answer to the question I just raised?

A No.

Q How many shares of NJB stock did D-Z have at that point in time?

A I don't know.

Q Well, can you fix the date on which you had the conversation with Mr. Zimmerman in which he indicated the probability more exactly? Just for clarification purposes, the 13(d) indicates dates of purchases.

A It was a Saturday at my home, and I would guess it was the end of June, exactly the weekend, I don't know. It was between the meeting date of NJB, and the end of June.

Q Did there come a time when D-Z did not have sufficient cash to make the purchases which you believe it ought to make?

MR. WILD: I object to the form of the question. The witness may answer.

A I don't think so.

Q Did there come a time when the proceeds of the notes no longer left enough cash available to D-Z for

the purpose of making the stock purchases for NJB?

A Yes.

Q When was that point reached?

A July.

Q July what?

A I believe it was the week of July 8, 7, something like that.

MR. SCHWARTZ: Mark this as Defendant Trustee's Exhibit 17 for identification.

I am presenting it for identification, and it is a letter dated July 18, on the letterhead of Rubin, Wachtel enclosing a document identified --

MR. WILD: 1974.

MR. SCHWARTZ: Yes. Covering a document identified on its face as Amendment No. 4 to Schedule 13(d), which amendment has a cover page, and two pages of text.

(Document referred to was marked Defendant Trustee's Exhibit 17 for identification.)

Q Now, I show you the just marked Defendant Trustee's Exhibit 17 for identification and page 1 thereof, showing certain purchases of NJB stock by D-Z, after July 7 or 6. Specifically, purchases on July 12, of 1100 shares, and July 15 of 400 shares. And I ask

you, please, to tell me how those purchases were paid for?

MR. WILD: Let the witness examine the document, first.

A How they were paid for?

Q Yes.

A I am not sure they were paid for yet.

Q You are not sure they were paid for?

A As of yet, no.

Q Who purchased them? In fact, I don't mean in legal interest.

A D-Z.

Q D-Z purchased them itself or through a broker?

A Through a broker.

Q And who was the broker?

A I don't know. It could be Cantor, Fitzgerald. I haven't seen the confirms, because since I have been back from Europe, I have been in New York for two days, and back here up for deposition --

Q I didn't ask you about that.

A And that is why I have no knowledge of that.

Q What understanding do you have with Cantor, Fitzgerald as to the terms on which you settle with them?

A I think it is a cash trade.

Q So that Cantor, Fitzgerald has cash of yours or of D-Z's sufficient to cover these purchases?

A No, I -- I don't think they have cash. What reason would they have our cash? We have not -- I am not sure we paid for it yet.

Q Is it your testimony you don't think Cantor, Fitzgerald has yet paid for these shares or you have not paid Cantor, Fitzgerald?

A I don't think we paid Cantor, Fitzgerald yet.

Q Do you anticipate paying Cantor, Fitzgerald?

A Oh, yes.

Q How do you expect to pay them?

A When I go back to Atlanta, I will write a check.

Q What will the source of the check be, whose checking account the check would be drawn on?

A D-Z.

Q Does D-Z have sources adequate to cover that check?

A I am not sure.

Q You do intend to write the check regardless of whether the funds are adequate to cover it?

MR. WILD: Objection, as being argumentative. The witness may answer.

A Obviously not.

Q Supposing that the account is not sufficient to cover the check, how do you expect to pay for the stock?

MR. WILD: Objection to the form of the question. It contains a supposition.

Q Mr. Witness?

A Would you mind repeating the question.

Q If you haven't got the money in the D-Z account, how are you going to --

A I will see that D-Z will get the money.

Q How will you see to it?

A I will either lend myself or my company or the Beckers will lend it to them.

Q Will these loans be against the notes that we have had previous testimony about?

A No.

MR. WILD: Again, you are talking about secured --

Q Evidenced by?

A I think they would be open advances.

Q I see. The open advances you just testified to, have they any security?

A No.

Excerpts from Deposition of Bruce R. Davis

Q They will be wholly unsecured loans?

A Yes.

Q Will they be interest-bearing loans?

A I don't know.

Q You don't know?

A No.

Q I don't hear you.

A I don't know.

(continued on next page.)

* * *

Q Has D-Z ever before received non-interest bearing loans from any person or entity?

A Yes.

Q On what occasions?

* * *

A I advanced $75,000 to it.

Q You advanced to the D-Z Investment Company $75,000?

A Yes.

Q When did you advance it?

A About July 7th, I think.

Q July 7th?

A Yes. Thereabouts.

What were the terms of that transaction?

A There were no terms. It was an open advance.

Q Was it secured in any manner?

A No.

Q What was the source of the $75,000 which you loaned the D-Z?

A My personal funds.

Q What would be the source of any loans that Mr. Becker, either Mr. Becker might make to D-Z to cover your cash needs at this point?

MR. WILD: I object to the form of the question. It is speculative, and I direct the witness not to answer.

Q Who is Mr. Becker ? In the past has he ever made cash loans to D-Z?

A Not that I know of.

Q What reason do you have to think that he would do so in the future?

A He made a commitment.

Q What was the commitment?

A That he would advance the money, if needed.

Q When did he make that commitment?

A About the end of June.

Q About the end of June?

A Yes.

Q And where did this happen, where he made the commitment?

A In my office probably.

Q Your office in Atlanta?

A Yes.

Q Who else was present at that meeting?

A His brother, both brothers.

Q Just for the purpose of clarification, let's refer to Ralph as Ralph, and Saul as Saul, so the transcript is clear.

A Ralph and Saul were at the meeting.

Q And who said that he would --

A Both of them said.

Q Was there any discussion had as to the source of the funds they would use?

A They are substantial people. So I would assume they use their own funds.

Q I see. But there were no specific discussion as to the source of it?

A No.

Q Were you relying on some previous understanding with them as to the terms on which they would lend the

the money?

A No.

Q They just out of a clear blue sky said we will give you whatever money you need?

MR. WILD: Objection. Argumentative. The witness is directed not to answer.

Q Did they have any earlier understanding with you that they would make money available to D-Z if as and when needed or any understanding at all -- I will withdraw the question.

Did they have any understanding with you or with D-Z, as to their willingness to advance funds for D-Z's corporate purposes?

MR. WILD: Objection to the form of the question. The witness may answer.

A We had an understanding.

Q When was that understanding formulated?

A In June.

Q I am asking you previous to the meeting you were testifying about a moment ago.

A We had no reason to discuss it prior to that.

Q I see. At that meeting, though, an understanding was arrived at?

A Yes.

Q What was the understanding?

A We committed that each -- for each of us, whatever funds were needed by D-Z, we will provide.

Q When you say for each of us, would you be more specific, for example, what was Ralph's commitment?

A We made no definitive commitment.

Q What was Saul's commitment?

A He made no definite commitment.

Q What was your commitment?

A I made no definite commitment.

Q What was the source of the commitment that all three of you made?

A Just what I told you.

Q Do you have any understanding of the same nature with any other person or entity other than the two Beckers and yourself?

A No.

* * *

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Q All right. Mr. Witness, did D-Z at any time use the proceeds of the bank borrowing to purchase shares of NJB stock?

A I don't think so.

Q I show you now Defendant Trustee's Exhibit

17 for identification, and I refer you to the language previous quoted on the record, and ask if, to the best of your knowledge, that statement is true?

A It is true.

Q There is an apparent discrepancy between the testimony of a moment ago,and the statement in the exhibit now being shown to you.

MR. WILD: That's your conclusion.

MR. SCHWARTZ: Yes, it is.

Q Do you agree that there is a discrepancy?

A No.

Q Can you explain why there is not a discrepancy?

A If you will read the question. You asked me if I borrowed to buy stock. This loan is my understanding was made after the stock was bought, and was conveyed from Cantor, Fitzgerald to the bank. And it was paid for by --

Q Wait a minute.

MR. WILD: Don't tell him wait a minute. He is answering a question.

MR. SCHWARTZ: I apologize.

A I --

Q Conveyed by Cantor, Fitzgerald to the bank, is your testimony?

A Yes. The stock is 25,000 shares; and then the

funds which -- of the $62,500 was transferred to Cantor, Fitzgerald.

Q To whom was the loan made?

A D-Z but it was for stock, I believe, already purchased.

Q Who negotiated the loan on behalf of D-Z?

A I believe Cantor, Fitzgerald arranged the loan.

Q What is the basis of your belief?

A They introduced me to the bank.

Q When did Cantor, Fitzgerald negotiate this loan with the bank?

MR. KILL: I will object to the form of the question.

A The note --

MR. WILD: I join in the objection.

A There is a note evidencing the debt around that time.

MR. SCHWARTZ: Would you mark as Exhibit 18, a printed document headed "Individual Or Corporate Guarantee," and signed by Bruce Davis, in the presence of William Miller. We will mark that as 18.

And as Exhibit 19, a document headed "Board Of Governors of the Federal Reserve System," and

in the right-hand corner, the indication R. Form U-1, Rev. 6-61.

(Document entitled "Individual Or Corporate Guarantee" marked Defendant Trustee's Exhibit No. 18 for identification, this date.)

(Document entitled "Board Of Governors of the Federal Reserve System" marked Defendant Trustee's Exhibit No. 19 for identification, this date.)

Q Mr. Witness, what is the name of the bank which made the $62,500 loan which you testified to?

MR. WILD: Just previously?

Q Yes.

A Columbia National Bank.

Q And where are their offices located?

A Chicago, I understand.

Q Did you personally have any contact with an officer or employee of the bank?

A No.

Q Who on behalf of or representing D-Z did have such contact?

A Nobody.

Q Who on behalf of Cantor, Fitzgerald did have such contact?

A It would be pure speculation that Bill Miller did.

Q You don't know?

A I don't know.

Q Is D-Z in any way obligated on that loan?

A Sure. They are the maker.

Q They are the maker?

A Yes. To the best of my knowledge, they are the maker.

Q Is the loan guaranteed by anybody?

A By myself.

Q Yourself individually?

A Yes.

Q Not as an officer of D-Z?

A That's correct.

Q Let me see if I understand your testimony. D-Z made -- I will do it carefully, because I don't understand. D-Z made a $62,500 loan from this bank, which you personally guaranteed, and you were not yourself present nor to your knowledge represented in the negotiations that led up to that transaction?

MR. WILD: Objection to the form of the question.

A Well, Mr. Miller negotiated -- I think it is Mr. Miller, somebody from Cantor, Fitzgerald, I think it was Miller, negotiated the loan on our behalf, with the

Excerpts from Deposition of Bruce R. Davis

Columbia National Bank, where we put up 25,000 shares which we previously bought on margin, and they loaned us $62,500 against it, which I think is below the margin requirements.

* * *

Q How did it come about that Cantor, Fitzgerald approached the Columbia National Bank for this loan?

A Because they were reaching their maximum that they could offer in the way of margin.

Q They were reaching the maximum?

A Yes.

Q When was this?

MR. WILD: The time has already been testified to.

A I don't --

MR. WILD: In the loan documents.

MR. SCHWARTZ: The time has not been testified to --

A I don't remember whether they reached about 100,000 shares, whatever that was. So let's see, if you want to go into this, somewhere in the middle of June, I would say.

Q In the middle of June?

A Yes.

Q And what happened, did Cantor, Fitzgerald advise you that they were limiting the limit of their willingness to make margin loans?

A No. Initially when we started the program, they indicated about how far they could go.

Q And as you arrived at the point at which they could go no further, what happened then?

A It was not a question of their not going any further, it was a matter of looking for areas, to buy it on margin or borrow from banks, so as to relieve them of the margin.

Q Did you have some meeting at which this

problem was discussed as to what to do next, now that you had reached the limit of their commitment?

A No.

Q Did you have a telephone conversation on that subject?

A We had very -- we discussed every once in a while how I was --

Q I want to know where and when you discussed it.

MR. WILD: Please allow him to complete his answer before you ask him another question.

MR. SCHWARTZ: Okay.

Q Please finish your answer.

A We had either telephone conversations or meetings, daily contact, just in general conversation how we were doing, and that sort of thing.

Q Now, did it happen in the course of one of these conversations that they indicated to you in words or substance, that they were unable or unwilling or they reached the limit of their commitment in terms of making margin financing availble to D-Z?

MR. KILL: Objection to the form of the question.

MR. WILD: I join in the objection.

A I think in one of the conversations, they said, you

know we are reaching the end.

Q What else was said in that conversation?

A Nothing, except -- nothing that related to that. The conversation reverted to, am I making any progress as it relates to financing?

Q And what did you say in relation to that question?

A I said, we would make some inquiry, and we would seek to find out more details about the -- we told him that we were making inquiries and that it hadn't come to yes or no yet.

Q Did you specify what inquiries you were making?

A No.

Q Did they ask you what inquiries you were making?

A Only that it was with banks, and named the banks, that was --

Q Was there any discussion of their making inquiries?

A The only thing they were going to try to do, was to set up buying through other brokerage houses that could accumulate the margin.

Q Just to be perfectly clear, there are two

services a brokerage firm might be, they might buy, and they might also advance margin.

MR. WILD: Those are not all the services.

Q With reference to the matters of examination?

A OUr agreement was that they would arrange the margin.

Q So whomever you spoke to at Cantor, Fitzgerald, who was that by the way?

A Bill Miller.

Q Mr. Miller indicated they were attempting to find another brokerage house that would be able to make additional margin financing available?

A That's correct.

Q Did he indicate that he or his associates were engaged in financing other sources than brokerage houses of financing?

A At that juncture, no.

Q Did there come a time when he indicated to you in words or substance that he was attempting to get other sources of financing other than brokerage house financing?

A Prior to that time.

Q Prior to that time?

A Yes.

Q When was that?

A The first week in May, I believe.

Q The conversation was on the telephone?

A No. They made an appointment; at the Sterling National Bank.

Q And for whom was the appointment made?

A Myself.

Q Accompanied by them or --

A By them.

Q Did you in fact attend?

A Yes.

Q Who accompanied for Cantor, Fitzgerald?

A Bill Miller, and George Delson.

Q To be sure on the time frame now, this is the beginning of May?

A Yes.

Q With whom from the STerling Bank did you meet?

A The president, Jerry Toomey.

Q And what was said at that meeting?

A Just that we would like to seek their aid and help, if they would finance the purchase of stock that we were going to buy; 50 percent, of whatever we bought.

Q Did you indicate that you had any other sources of financing available to you at that time?

A No, I didn't indicate.

Q Did Mr. Miller so indicate?

A To the bank, you mean?

Q Yes.

A I am not sure.

Q Did the bank inquire as to whether you had any other sources of funds available?

A No.

Q What was the bank's reaction to the --

A They took it under advisement; and subsequently they said they weren't interested in financing stock of a REIT.

Q Was it your decision to attend the meeting -- was it your decision to set up the meeting at the Sterling National Bank?

MR. WILD: I object to the form of the question.

A Was it my decision?

Q Yes.

A Bither it was a joint decision or --

Q Joint meaning --

A Cantor, Fitzgerald and my self.

Q And what reasons prompted you to make that decision, by you now I mean collectively the people who made it?

A Realizing that they had certain limitations on their capital requirements, we looked to open other avenues of financing.

Q Those limits, if I understand your chronology had not yet been reached, but you understood at some point that would be reached?

A Yes.

Q And this meeting in advance of the point that it was reached?

A Yes.

Q The STerling National Bank, however, turned you down?

A That's correct.

Q Did you have any other meetings prior to the time at which the limit of Cantor, Fitzgerald was reached?

A Yes.

Q With banks?

A Yes.

Q Or a bank or banks?

A Yes. ONe other bank. Bank of North America.

Q The Bank of North America?

A Yes.

Q How did that meeting come about?

A Mr. DeMain of Cantor, Fitzgerald arranged the meeting.

Q What is Mr. DeMain's full name, please?

A Jerry.

Q Was Mr. DeMain involved in the conversations, meetings, and so on, between you and Cantor, Fitzgerald with reference to D-Z?

A No.

Q How did it come about, then, that Mr. DeMain made the appointment?

A I think he deals with the Bank of North America, on some of their institutions.

Q On some of --

A Cantor, Fitzgerald institutional business. I am not too sure. He is located in California, so I don't know.

Q Was he requested to contact the bank by any of the other officers of Cantor, Fitzgerald whose names are now familiar in the record?

MR. WILD: Objection to the form of the question.

Q By either Mr. Orbe or Mr. Miller?

MR. KILL: Objection to the form of the question.

A I really don't know how it came about.

Q Was such a meeting in fact scheduled?

A Yes.

Q For whom?

A Myself.

Q Anybody else?

A Mr. Miller.

Q Anybody else?

A No.

Q Just the two of you?

A Yes.

Q Was such a meeting held?

A Yes.

Q Where and when?

A At the Bank of North America, down in Wall Street somewhere.

Q Here in New York?

A Yes.

Q And who attended on behalf of the bank?

A I don't remember. A fellow we had the original meeting with never showed. It was an assistant, it lasted about ten minutes.

Q And what was said at that meeting on your side as to what the purpose of the meeting was?

A To see if they would be interested in this purpose loan.

Q Did you disclose to them that you had other sources of financing?

A No.

Q Did you disclose to them how many shares of stock you wanted them to finance the purchase of?

A I think Cantor, Fitzgerald had given some parameter, $50,000, $90,000, I am not sure.

Q How were those parameters arrived at?

A Arbitrarily. Just that they said, would you do it up to a certain amount, I think, I am not sure, and there was no definitive. We didn't own that stock at the time, so it didn't --

Q Now, you say you don't recollect the name of the gentleman from the bank who met with you. What was his reaction to your request?

A He said he would take it under advisement.

Q It seems to be a favorite expression of --

A Yes, it gives them an out.

Q Did he ever communicate with you again with reference to the subject of the meeting?

A No, he communicated with his superior, and he communicated with Cantor, Fitzgerald, and told him they were not in a position, and they gave the same answer, they did not want of finance REIT's stocks.

Q Do you recollect the specific dates of these two meetings that you testified to, the meeting with Sterling Bank, and the meeting with the National Bank

of North America?

A It was the first week in May, I know, with the Sterling National; and if I am not mistaken, it was either Monday thereafter or Tuesday with the Bank of North America.

Q Had you come to New York for the purpose of having these meetings?

A No.

Q What had brought you to New York?

A I come to New York frequently.

Q I see. Did you indicate to either bank officer, the total number of shares of the REIT, which you attended to acquire?

A I am not sure --

MR. WILD: If the man was an officer.

Q The representative of the bank.

A I don't think so. I don't recall this coming up in conversation.

Q Did you indicate in words or substance that it was the purpose of D-Z to acquire control of the REIT?

A I think with Sterling, we did. The Bank of North America, we never got that far.

(Continued on following page)

Q Now, apart from the two abortive negotiations you testified to, were there any other instances prior to the point at which Cantor, Fitzgerald reached the limit of its commitment, and which you or Cantor, Fitzgerald on your behalf made an approach to a bank, in an effort to obtain additinal financing once they had reached their limit?

MR. WILD: Objection to the form of the question.

MR. KILL: I join in it.

A We made no more efforts.

Q I see.

Now, when Cantor, Fitzgerald had reached the level of its commitment --

A Can I interrupt, they never made a commitment.

Q They just gave parameters?

A Parameters.

Q When it was approaching the limit of the parameters?

A Yes.

Q What efforts were made by Cantor, Fitzgerald to obtain additional financing for your undertaking?

A They --

MR. KILL: Read it back.

MR. WILD: The time frame of reference is when they were reaching their parameters.

MR. SCHWARTZ: That is right.

A The only thing they did, is they sought to buy the stock from brokerage houses that would provide margin financing.

Q Well, let's hold that. Did they -- I am sorry, strike that question.

Did they attempt to arrange a relationship with D-Z with some other brokerage house?

A Yes.

Q Other than Cantor, Fitzgerald?

A Yes.

Q With more than one other brokerage house?

A Yes.

Q What brokerage houses?

A Ladenburg, Thallman. Hayden Stone.

Q Those two and none others?

A Drexel, Burnham, I think. As a matter of fact, Drexel, Burnham, that is right.

Q Did these attempts involve any personal participation by yourself?

A Ladenberg , I met with.

Q I see. When did that meeting occur?

A July 8.

Q July 8?

A Yes. Tuesday, if that is Tuesday. It was that week of July 8. And Drexel, Burnham, they had contacted -- what happened on the Drexel, Burnham, actually, they had called me direct.

Q Who is "they"?

A Drexel, Burnham, a fellow named Bernard Panhoff. They are located in California; and after reading the articles in the newspapers, as related to D-Z, I wanted to understand why we were interested in D-Z, when he thought there were better investments around. He had done a study.

Q Why were you interested in D-Z?

A No, why D-Z was interested in NJB, when there was, in his opinion, better situations, and we got into conversation, and subsequent to that, he called us that he would like to do business. I said, well, all our buying of stock is done through Cantor, Fitzgerald, at their direction. And if he would like, he can call Bernie Cantor, and that is the way that was --

Q Did the representative of Drexel, Burnham indicate that they would make margin financing available to you?

A No. I didn't get into conversations with them. I told them to take it up with Bernie Kantor.

Q To your knowledge, did he take it up with Bernie Kantor?

A Yes.

Q On what occasion?

A Subsequent to my phone call conversation.

Q And what was said between you and them?

A I don't know.

Q To your knowledge, did Drexel, Burnham ever supply margin financing for the purposes of these --

A No, they didn't.

Q Did Ladenberg, Thallman ever supply margin financing?

A Yes.

Q How was that financing arrangement arrived at?

A Fifty percent of whatever we bought.

Q What meetings, conversations, correspondence and so on led --

A I think Cantor, Fitzgerald initially, and then I met with them.

Q When did you meet with them?

A July 8.

Q And what was said at that meeting?

A Just a review of what we were doing, and who we were, et cetera.

Q Did you indicate to Ladenberg, Thallman, how many shares you intended to acquire?

A From them or in total?

Q In total.

A We had conversation, but I don't think it involved as to the shares. Just my views and why I was interested in NJB.

Q Your views on what subject?

A On REITs in general.

Q How did that subject come up in the discussion about margin financing?

A Well, it didn't come up in relation to the margin. It just came up that they were buying, and they were just considering us.

Q Did they indicate that there was any parameter within which they would make margin financing available?

A Yes, I think it was up to about 30,000 shares.

Q Thirty thousand shares?

A Yes.

Q Expressed in terms of shares, then?

A I think that -- it wasn't discussed with me at that meeting; actually. I got that information through

Cantor, Fitzgerald.

Q Are you saying that that was information communicated to you after Cantor, Fitzgerald had a further meeting with Ladenburg, Thalmann?

A Had a prior meeting.

Q Had a prior meeting?

A Yes.

Q So, when you went to Ladenburg, you knew what the parameters were?

A Yes.

Q With whom did you meet at Ladenburg, Thalmann?

A A fellow named Schultz, and a fellow named Blumberg, one is president and one is senior vice president.

Q I see.

Apart from what you now just testified to, no other efforts were made to your knowledge to arrange additional margin opportunities, margin financing opportunities for D-Z by Cantor, Fitzgerald?

A Yes, one other, I mentioned; Hayden Stone.

Q How did that come about?

A Cantor, Fitzgerald arranged that.

They introduced us to the Hayden Stone people.

Q And was a meeting held between yourself and

any representative of Hayden Stone?

A No.

Q Was a telephone conversation had?

A It was a telephone conversation in my presence, I didn't participate in it.

Q Who were the parties to the --

A Bill Miller from Cantor, Fitzgerald, and I don't know the gentleman's name on the other side.

Q And what was said in your hearing?

A Just that they were going to purchase stock, and various forms that we were filling out, the direction as to the information to be included therein.

Q Did any parameters get established as to the amount of margin finance that would be made available?

A No.

Q Do you still have margin accounts, by "you" now, I am talking about D-Z, still have margin accounts with Hayden Stone, Drexel, Burnham or Ladenburg, Thalmann?

A I think, when you say do we have margin accounts, is it being maintained, is that your question?

Q Yes.

A Yes.

Q With which of those three?

A With Ladenburg, and Hayden Stone. Did you include

Cantor, Fitzgerald in that?

Q Yes.

A And Cantor, Fitzgerald.

Q How near to the parameters are you in terms of your margin account at Ladenburg, Thalmann?

A We are at it.

Q You are at it?

A Yes.

Q With respect to Cantor, Fitzgerald, you already testified you passed it?

A I don't know. They could open it up at their own discretion.

Q But as matters are now --

A We are not buying any stock because of the court order anyway.

Q With Hayden Stone, have you reached or exceeded your parameters?

A I don't know. We haven't outlined the parameters.

Q And with Drexel, Burnham?

A They never provided margin financing.

Q Your understanding with Drexel --

A They wouldn't provide any margin.

Q To your knowledge, when did Cantor, Fitzgerald first make contact with the Columbia National Bank?

A Sometime in the early part of May.

A I guess, I really don't have a recollection. If I saw the date of the --

Q I think I have shown you everything that was introduced to us about the transaction of borrowing; that you were testifying to, and I call for the production of any other documents --

A I think there is a note.

* * *

Q How was that first contact made in early May?

A The question was the Columbia National Bank.

Q Read the question.

(Record read.)

Q Do you understand the question?

A You asked me how the introduction was made?

Q What was the first contact? You testified the first contact came in early May?

A Yes.

Q What was the first contact between Cantor, Fitzgerald, and the Columbia Bank?

A I don't think I understand. What do you mean what was the first contact?

Q To the best of your knowledge, how did it happen that there is a relationship --

A I think they had a relationship prior.

Q And what was the nature of that relationship?

A I have no idea.

Q When, to your knowledge -- what to your knowledge was the first contact between them on the subject of loans to D-Z?

A I think it was about the time the note was executed; maybe a week before, it was in that time frame work.

Q Who made the contact for Cantor, Fitzgerald?

A I think it was Bill Miller, I am not sure.

Q What form did that contact take?

A I really don't know.

Q Did Mr. Miller then advise you that he was making this contact?

A Yes.

Q You had not previously asked him to make this contact?

A I requested if he knew any banks that would accommodate us to see what he could set up.

Q When did you make that request of him?

A At the beginning, when we first started purchasing.

Q Did he then, when you first started talking, you are talking now about the middle of April?

A Yes.

Q Did he then mention that one of the banks that he had a contact with was the Columbia Bank?

A No.

Q When did he first mention in response to your question?

A About the time the bank agreed to provide us with the loan.

Q Did he indicate he had previously forgotten that there was this connection?

A There was just no comment at all that related to it.

We never discussed it.

Q When and how did Mr. Miller advise you that he had made contact with the Columbia Bank in this matter?

A I think when it was concluded, he told me that he was able to get it accommodated by them.

Q Do you recollect the date of that information?

A It would be in the framework of a week prior to the note date, whatever that may be.

Q You say it was when the transaction was concluded that he told you, and then you say the date he told you was a week prior to the date of the note?

A No, what I said was that, during that time, prior to the conclusion, the conclusion when I signed the note, he had told me that he had been able to arrange this accommodation by the bank.

* * *

Q Did Mr. Miller, in the conversation you were just describing indicate to you what the terms of the note were?

A No. The terms were on the note.

Q Did he then supply you with a copy of the form of note?

A Yes.

Q And what were the terms of the note?

A I don't recall.

Q What are the terms of the note?

A I would have to see the note to refresh my memory.

Q Is the note secured?

A By the stock.

Q By which stock?

A Twenty-five thousand shares of NJB.

Q In whose name is that stock registered?

A D-Z.

Q Who has physical custody of the stock?

A I believe the bank.

Q At the time that you made the loan, was the stock in your possession?

A No.

Q In whose possession was it?

A I am only guessing, it was in Cantor, Fitzgerald's

or their bank.

Q How did they or their bank come to have possession of it?

A It was part of the purchases they made on margin for our account.

Q The 25,000 shares had been bought on margin?

A Yes, I believe that is true.

(Brief recess taken.)

Q At the time that the shares were pledged to the bank, had the margin loan which the shares secured been paid?

A I think the proceeds of the loan went directly to them to repay, because the 62,500 went from the bank to Cantor, Fitzgerald.

Q Did you at any time receive the proceeds of the loan?

A No. Directly, or the benefit of it.

Q By you, I am talking about D-Z. Did D-Z ever get a check for $62,500?

A No.

Q To your knowledge, was a check ever issued by the Columbia National Bank in that amount or such lesser amount that they might have arrived at by deducting

some interest in advance?

A To D-Z?

Q Yes, sir.

A No.

Q D-Z's note which you personally guaranteed, and D-Z never got a check for the proceeds of the loan?

A Well, we got a paid-up account at Cantor, Fitzgerald for those 25,000 shares.

Q With the 25,000 shares -- I will withdraw that.

Was the margin loan which had been given to buy the 25,000 shares beyond the parameters that Cantor, Fitzgerald had previously established?

MR. WILD: I object to the form of the question. It is incomprehensible to me. If the witness understands it, he may answer.

A I don't think so.

Q Did Mr. Miller in your conversation in which he apprised you that there was -- I will withdraw the question.

Did Mr. Miller, when he told you that he had made contact with the Columbia Bank, indicate that he had done it because you were beyond your parameters with them?

A Yes.

Q Did he indicate any other purpose he had in making that contact?

A Only that it offered another source of financing, to replace their margin.

Q Did you ask him why it was necessary that the margin be replaced if you had not yet reached the limit of their parameters?

A We had discussed it previously, as I told you, and we were both in agreement that we would seek all sources as early in the game as possible.

Q You say that we should seek all sources, I stress we --

A Well, the Cantor, Fitzgerald, and D-Z.

Q Was this in your judgment, by this, I mean the Columbia Bank, a source for D-Z?

A They made the loan to D-Z, so I would say it was a source for D-Z.

* * *

Q Has the loan from the Columbia Bank been repaid?

A No.

Q Has any part of it been repaid?

A No.

Q When is the loan due?

A I think it is a demand loan.

Q Has it been presented for payment?

A No.

Q Has there been any conversation about when it will be presented for payment?

A No.

Q Has any interest been paid on the loan?

A No.

Q Has there been any demand made for the payment of interest?

A No.

Q To your knowledge, is the interest due currently or is it due only when the note is called?

A I don't know. I would have to see the terms and conditions of the note.

MR. SCHWARTZ: Off the record.

(Discussion off the record.)

MR. SCHWARTZ: Could we mark this for identification, Defendant's Exhibit 20 for identification; this is a single sheet of paper headed "Single Payment on Demand Note and Security Agreement," and bearing at the foot of it, the signature of Bruce Davis, and line for the signature of Saul Becker, impossible to determine if Saul Becker signed it.

(Document referred to was marked Defendant Trustee's Exhibit 20 for identification.)

* * *

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Q Has D-Z established on its books any reserve for the repayment of this loan?

MR. WILD: Objection to the form of the question.

A How do you establish a reserve on the sale of -- I am not sure I understand the question.

Q Has D-Z made any provision for the repayment of this loan?

A No.

Q Do you have any plan or program with respect to the repayment of this loan?

A No.

Q Do you have any reason to think the note, on its face, payable on demand will never be presented for payment?

A No.

MR. WILD: Objection to the form of the question.

Q Did Mr. Becker sign the note?

A I don't remember.

MR. WILD: Are you talking about Mr. Saul Becker?

MR. SCHWARTZ: Yes.

Q Did there come a time, Mr. Davis, when you or someone acting in your behalf obtained a shareholders list of NJB Prime?

A Yes.

Q Can you tell us when that occurred?

A I believe it was in May.

Q And what were the circumstances that brought it about that you obtained such a list?

A We sought to communicate with shareholders prior to any annual meeting that would be held.

Q What efforts did you make to communicate with shareholders in advance of any annual meeting?

A I made no effort.

Q Maybe I misunderstood your answer.

A Repeat the question, so we will be on the same wave length.

Q How did it come about that you obtained a copy of the shareholders list of NJB?

A We went to court.

Q Yes.

A And the court in Massachusetts ordered NJB Prime

to produce and supply us with a copy of the shareholders list.

Q Did you make any representation to the court in Massachusetts as to why you wanted to obtain the shareholders list?

A I believe, without seeing it, that it was in order to communicate to the stockholders.

MR. SCHWARTZ: Could we mark as an exhibit, an affidavit of Bruce R. Davis, undated, but bearing the caption of the Superior Court, Suffolk County, Commonwealth of Massachusetts.

(Document referred to was marked Defendant Trustee's Exhibit 21 for identification.)

Q Mr. Davis, I show you Defendant Trustee's Exhibit 21 for identification, and ask you if you can identify that?

MR. WILD: Examine the entire document.

A It looks like a complete copy of the affidavit -- of my affidavit.

Q Of your affidavit --

A To the Superior Court as it related to the stockholders list you referred to.

Q Directing your attention to page 2 of paragraph 3 of the affidavit, quoting "It is urgent that D-Z

communicate with the shareholders of NJB with respect to serious matters affecting NJB and its management of which D-Z has become aware."

Do you recollect that statement?

A Yes.

Q Did NJB provide you with a shareholders list?

A Once we went to court, yes.

MR. SCHWARTZ: Strike the first part of the answer as not responsive.

MR. KILL: You move to strike?

MR. SCHWARTZ: I move to strike the first part of the answer as non-responsive.

Q Did you, as set forth in the affidavit communicate with the shareholders of NJB after you received the shareholders list at any time?

A I am thinking. Can I see the date of that? I want to make sure.

No. I didn't communicate, other than conversation at the shareholders meeting.

Q I will repeat my question: Did you at any time after receiving the shareholders list use it to communicate with the shareholders of NJB?

A Use the list?

Q Yes.

A No.

Q Did you, without using the list, make any attempt to communicate with the shareholders in advance of the meeting held in June 13 of NJB?

A The only communication I had in advance, where I made the overture. I assume that is the question; as opposed to people overturing to me?

Q Yes.

A Was in the beginning of May.

Q Did anybody acting at your instruction or on your behalf use the shareholders list in advance of the meeting -- at any time to communicate with the shareholders of NJB?

MR. WILD: That is two questions.

MR. SCHWARTZ: All right.

Q Did anybody acting at your instructions use the shareholders list to communicate with shareholders of NJB?

A No. Not that I know of.

Q Well, at your instructions?

A As I say, I gave no instructions.

Q Did anybody acting on your behalf use the shareholders list at any time to communicate with the shareholders of NJB?

MR. WILD: I object to the form of the question.

A What does that mean, I can answer?

Q Yes.

A Repeat the question.

(Record read.)

Q Amend the question, to read to your knowledge, Mr. Davis.

A No.

Q Who physically received the shareholders list when NJB supplied it?

A I believe our attorneys.

Q Who were they?

A I am not sure, it was either Rubin, Wachtel, or Manny Levin, our counsel in Massachusetts, I am not sure which.

Q Did the counsel that received the list transmit it to you in some form?

A I don't think I ever physically had it.

Q Did they retain possession of it?

A Yes.

Q They never communicated it to your knowledge to anybody?

MR. WILD: Objection to the form of the question.

A I think they delivered a copy to Cantor, Fitzgerald, and I am not certain, but in the meeting subsequently

held, with Georgeson. we might have delivered a copy with them, I am not sure.

Q Starting first with Cantor, Fitzgerald, how did it come about that the lawyers delivered a copy to Cantor, Fitzgerald?

A I think Cantor, Fitzgerald might have requested it. I am not sure how it came about. Or Cantor, Fitzgerald might have run off the copies of it. I am not sure exactly how it happened.

Q How did Cantor, Fitzgerald become aware that your attorneys had possession of a shareholders list of NJB?

A Cantor, Fitzgerald was aware of what was going on, throughout the transaction, so they knew at the same time I knew.

Q Did there come a time after you learned that your action had been successful that you called someone at Cantor, Fitzgerald to say we won, we got the list?

MR. WILD: Objection to the form of the question.

(continued on next page.)

Q Was there any specific conversation in which you advised anybody from Cantor, Fitzgerald that you had obtained a shareholders' list?

MR. WILD: Objection as repetitious.

A I don't recall.

Q To whom did Cantor, Fitzgerald make the request that they obtain a copy of the shareholders' list, which was in the possession of your attorneys?

MR. KILL: I will object to the form of the question.

MR. WILD: I join in the objection.

Q To the extent of your knowledge?

A I don't know.

Q Did they make that request of you?

A I didn't have a copy of it, so I -- they might have said it to me, I don't know. I never had it in my possession.

Q What facts do you have in your possession which

allow you to know or to state here that Cantor, Fitzgerald has a copy of the shareholder list?

A I think I saw a copy at their office.

Q When was that?

A Sometime in -- after May 31st.

Q Why does the date May 31st stick in your mind?

A Because I think that's the date that the -- it was turned over to us, I am not positive, but I think it was a Friday.

Q Have you given Cantor, Fitzgerald instructions with respect to what use they should make of that shareholder list?

A No.

Q Have they indicated to you what use they are making of it?

A No.

MR. WILD: Objection to the form of the question.

A It has come to my knowledge, maybe that's a better answer, that certain phone calls were being made. This information is not related from Cantor, Fitzgerald, but my attorneys informed me that they --

MR. WILD: You don't have to answer any questions

as to information that was given to you by your attorneys.

Q Have you given Cantor, Fitzgerald any instructions not to use the shareholder list for any purpose?

MR. WILD: I object as being repetitious, but I will allow the witness to answer.

A The only general statement I made to Cantor, Fitzgerald was that anything that they do in this entire transaction be done in accordance with the rules and regulations, whatever they may be, because they were much more familiar with the rules than I am.

Q Your instructions related specifically to the shareholder list?

A No.

MR. SCHWARTZ: Please strike the witness' answer as not responsive.

MR. WILD: You may move to --

MR. SCHWARTZ: I will learn. I will move to strike.

Q Did there come a time when D-Z retained Georgeson & Company, 100 Wall Street in New York?

A Yes.

Q When was that?

A The first week in May, I believe. I believe there is a letter agreement. I don't have a copy of it.

MR. SCHWARTZ: Mark this for identification please. It is a letter dated May 28, 1974 on the letterhead of Georgeson & Company, bearing a date stamp "Received May 30, 1974, Security Management Company.

(Letter dated May 28, 1974 marked Defendant Trustee's Exhibit No. 22 for identification, this date.)

Q Can you identify this letter, Defendant's Exhibit 22 for identification?

A Yes, I recognize the letter.

Q This is the letter agreement that you previously testified to?

A Yes. I am not sure this is the final. It may be. I don't see my signature on it, which is -- I am not positive, unless there is another copy, I assume this is the full agreement.

Q How did it come about that D-Z retained Georgeson & Company?

A At the --

MR. WILD: I object to the form of the question. You may answer.

A At the suggestion of my counsel.

Q Which counsel?

A Rubin,Wachtel.

Q For what reason did they recommend that you retain Georgeson & Company?

MR. WILD: I object on the ground it is privileged.

Q For what purpose did you retain Georgeson & Company?

A In the event we were successful in postponing the annual meeting, and we attempted to put up our own slate, we would seek their aid in soliciting proxies.

Q Were you successful in delaying or preventing the annual meeting?

A No.

Q Did Georgeson render any services to you?

A No.

Q Did you pay Georgeson any money?

A I gave them a $5,000 retainer.

Q When was that?

A Shortly after May 30th.

Q Was that retainer ever refunded to D-Z?

A No.

* * *

Excerpts from Deposition of Bruce R. Davis

Q Do you anticipate receiving back from Georgeson the $5,000?

A I have given it no thought at this point.

Q Is your retainer arrangement or your agreement with Georgeson & Company still in force and effect?

A I would think so.

* * *

Q Since your injunction motion to stop the annual meeting failed, which I believe was on June 10th or 11th, have you had any contact with anybody from Georgeson & Company?

A No.

Q Has Cantor, Fitzgerald ever had any contact with anybody from --

MR. KILL: Objection.

Q To your knowledge?

MR. WILD: In reference to this matter?

Q Yes.

A To my knowledge, no.

Q Do you have any present intention to communicate with Georgeson & Company?

MR. WILD: I object to the form of the question. The witness may answer.

A It depends on the outcome of the litigation that we are presently in.

Q Could you amplify that answer?

A Well, if I am unsuccessful or if you people are successful, I would have no reason to contact Georgeson.

* * *

Excerpts from Deposition of Bruce R. Davis

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Q Have you entered into an agreement with, or contract with, any other firm or person substantially similar to the one which has been marked Defendant Trustee's Exhibit 22 for identification?

A No.

Q Do you have any oral understanding with any person or entity along similar lines?

A No.

Q Does the name William Schwartz mean anything to you?

A Yes.

Q Do you know any person named William Schwartz?

A I believe he is employed by Cantor, Fitzgerald.

Q In what capacity?

A I don't know.

Q Have you had occasion to meet Mr. Schwartz?

A Yes.

Q When?

A At their offices in Manhattan.

Q When?

A Several times. Since I have been going up there.

Q In what connection have you met with Mr. Schwartz?

A Social.

Q You never had any discussion of any of the matters which on a business basis brings you into that office with Mr. Schwartz?

A Yes. He told me on one occasion that he thought there was some stock at the Jacksonville National Bank that he could obtain, in NJB, and I told him that I had a personal friend at the bank who he could talk to.

Q To your knowledge, did Mr. Schwartz make the contact?

A Yes.

Q Did he report to you on the results of the contact?

A The results, as I best recollect was that the officer was not in a position at that time to commit the sale of the stock.

* * *

AFTERNOON SESSION

12:50 p.m.

B R U C E D A V I S, resumed.

CONTINUED EXAMINATION

BY MR. SCHWARTZ:

Q When Cantor, Fitzgerald first indicated that there were parameters on their willingness or ability to make margin financing available, did they indicate that they would assist you in obtaining alternative sources of financing when those parameters were reached or exceeded?

MR. WILD: Objection to the form. The witness can answer.

A I have to refer to the original agreement.

Q I think I have it. I am showing the witness an exhibit to Defendant Trustee's Exhibit 7, which is the original 15(d), which is a letter dated April 25, on the letterhead of Cantor, Fitzgerald, addressed to Mr. Davis, and ask if that is the original agreement that you refer to?

A This is the final agreement, and --

Q Is that the agreement you just referred to in your testimony?

A Yes.

The only commitment they made to me is that as it states "In pursuance of that end, we will use our best efforts to obtain funds sufficient to permit purchases of shares of the company on margin (provided such shares are marginal in accordance with applicable rules and regulations) to consummate the transaction or transactions contemplated hereby."

That was the only discussions we ever had, the rest were just parameters.

MR. SCHWARTZ: I would like to have marked for identification a letter dated April 24, 1974, on the letterhead of Cantor, Fitzgerald addressed to Mr. Davis; and stamped "Received April 26, 1974, Security Management Company."

(Document referred to was marked Defendant Trustee's Exhibit 23 for identification.)

Q I show you Defendant Trustee's Exhibit 23 for identification, and ask you if you have ever seen this letter before?

A Yes.

Q Does that letter come from your files?

A I believe so.

Q Thank you.

Referring you to an indented number

paragraph, number one, in the letter, and I quote: "If we assist you in arranging the financing required to complete a transaction ..."

And now someone has written into the margin the words "other than margin financing", and connected that with the previously read matter with an arrow; resuming: "... our compensation shall be five percent of the first million dollars, four percent of the second million dollars, three percent of the third million dollars, two percent of the fourth million dollars, one percent of the fifth million dollars, and one percent thereafter."

Showing the exhibit to the witness, does that statement reflect an understanding that had been reached between you and Cantor, Fitzgerald?

A I am not sure this was ever executed. The margin, this stuff in the margin is the attorney's. Basically, it was an arrangement, if they, as it related to a CNA type transaction, that was the intention; or if they found a joint venture partner.

Q At the bottom left of the letter, there is a line for Security Management Company's signature. Was the original of this letter ever executed by Security Management Company, to your knowledge?

A I really don't recall.

Q One way or the other?

A That is correct.

Q Is it your testimony that the words in the margin of the letter, "Other than margin financing" were inserted by the lawyers?

A Yes.

Q Which lawyers?

A Our lawyers, Rubin, Wachtel.

(continued on following page.)

Q Has Ralph Becker advanced any money or contributed any money to D-Z?

A No.

Q Do you and he have any understanding that he may in the future contribute or lend any money to D-Z?

MR. WILD: Objection as repetitious. The witness may answer.

A I already testified that I did.

Q Do you know from what source it is anticipated that such loans or other payments will be made?

MR. WILD: Off the record.

(Discussion held off the record.)

MR. WILD: I object to the form of the question.

A May I have the question again.

(Last pending question read.)

A From his personal funds.

Q Do you have any reason to think that Mr. Becker may borrow any of the money which he may, pursuant to this understanding, contribute to D-Z?

MR. WILD: I object to the form of that question.

A I don't know.

Q Has Mr. Saul Becker ever contributed any money

or paid any money in to D-Z?

A No.

Q Do you have any understanding with him that he may hereafter do so?

A Yes, I do.

Q Do you know what the source of the funds is which is contemplated for that purpose?

MR. WILD: I object to the form of the question.

A Yes, I assume from his personal funds.

Q Do you have any reason to think that he may borrow the money, if necessary?

MR. WILD: I object to the form of the question.

A I have no knowledge.

Q Did you ever have any conversations with either Ralph or Saul Becker in which the possibility of their borrowing money for the use and benefit of D-Z was raised?

A I might have; I don't know.

Q You have no recollection?

A We are in constant conversation so it may have come up, in conversation.

Q In any conversations with the Beckers about

their possible payments to D-Z --

MR. WILD: Are you talking about advances, so I don't have to object?

MR. SCHWARTZ: Yes, payments are advances.

Q -- have any possible sources from which they might borrow been discussed?

A No.

* * *

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Q I would like to know whether, other than the entities or individuals who Mr. Davis has previously indicated advanced money one way or the other, for purchase of stock, are there any other individuals who advanced money for the purpose of purchasing stock by D-Z, of NJB, of course?

A Without frustrating you, I really don't understand what you are after. I am glad to answer it. I just don't understand the question.

Other than those people stated in the 13D, and other than the Columbia National Bank and other than the margin accounts that we said?

Q That's right.

A I know of no other stock purchased other than for cash.

Q Thank you.

Mr. Davis, the various 13D filings by D-Z, in respect of holdings of NJB, are signed either by you or by Mr. Zimmerman; referring to the original 13D and the four amendments which have, to your knowledge, to date been filed?

A I think Mr. Becker signed one.

MR. WILD: Won't the record speak for itself as to who signed it. Can we move onto the next question or to this --

Q Who, to your knowledge, has supplied the information which is contained in the form 13D filing and amendments?

MR. KILL: All the information?

MR. SCHWARTZ: All the people and all the information, one by one.

A In the original 13D, if you hand it to me.

Q (Handing.)

MR. SCHWARTZ: Let the record reflect that I am showing the witness Defendant Trustee's Exhibit 7 for identification.

A As to the individuals, each one, Bruce Davis, Jerome Zimmerman, Ralph Becker and Saul Becker, each provided their own background information. As to the promissory notes, I think Mr. Zimmerman supplied that to our attorneys,

who prepared the 13D. I believe I supplied the officers and directors and the voting stock. I supplied the letter agreement with Security and Cantor, Fitzgerald. The record of stock purchases were forwarded by Cantor, Fitzgerald to our attorneys as the purchases were made. I supplied the information as to our intentions now contemplated in -- now or to be contemplated in the future.

I think, other than the attorneys filling in whatever legal matter, which they extracted from myself or Mr. Zimmerman, I think that is about it.

Q Mr. Davis, you have testified as to the items which appear on the 13D, except for the item, "contract arrangements or understandings with respect to the securities of the issuer", who supplied the information contained in that item and, specifically, the statement, "neither D-Z nor any of its officers or directors are a party to any contracts or arrangements or understandings with respect to any persons or securities of NJB except that" and then you described the Cantor, Fitzgerald undertaking.

A I think I probably supplied that.

Q You did.

Directing your attention, first, to Defendant Trustee's Exhibit 8 for identification, which is amendment

2 of Schedule 13 and specifically Page 2 thereof, at the top, and I am showing it to you, there is a list of dates and amounts, and at the bottom of that listing a statement in the text: "Except for the purchase made on April 22 which was over-the-counter, all the above purchases were made on the American Stock Exchange."

Who supplied the information reflected in that statement?

A I believe Cantor, Fitzgerald.

Q Did you believe that information to be true?

A Yes.

Q Did you sign this amendment No. 1 in the 13D?

A I guess so. I don't have a copy of it.

MR. WILD: Let the witness see if it has a signature.

THE WITNESS: No, it is not a signature, just a conforming --

Q I now show you Defendant Trustee's Exhibit 17 for identification, the fourth amendment to 13D and specifically direct your attention to Pages 1 and 2 thereof; Page 1 shows a list of dates and a number of shares, also reflecting purchases made by D-Z; Page 2 contains the following matter: "All of the above purchases were made on the American Stock Exchange except for the following

portions made over-the-counter." There then follow a total of five dates of purchases and a total number of shares purchased of 97,200 shares.

Of those 97,200 shares, 85,000 are made on or before May 28, 1974.

A What is the question.

Q Did you believe that information to be true when you signed the 13D amendment?

A Yes.

Q I show you again Defendant Trustee's Exhibit 8 for identification, which indicates the purchases made on May 24 and May 28, which were made on the American Stock Exchange. Is that not so?

MR. WILD: The document speaks for itself.

Q Do you have any explanation, Mr. Davis, for the inconsistency between the statements in the two documents as to how the purchases or on what market or Exchange the two purchases were effected?

A I have.

MR. WILD: Let us have an opportunity to examine the document to see if, in fact, there is an inconsistency.

Off the record.

(Discussion held off the record.)

MR. WILD: May I have the question read back.

(Last pending question read.)

Q Can I have an answer to that.

A I have no explanation as to the reason for it.

Q You previously testified, Mr. Davis, that the language in Item 6, Page 5 of the original 13D, which is Defendant Trustee's Exhibit 7 for identification, stating that other than the Cantor, Fitzgerald contract or understanding, there was no contract, arrangement or understanding with any person with respect to any securities of NJB. To the best of your knowledge, was that statement ever modified or amended in any subsequent filing?

A I don't think so.

Q Specifically, has it ever been modified or amended in any subsequent filing with respect to the agreement with Georgeson Company, marked Defendant Trustee's Exhibit 22 for identification?

A I don't know.

Q You have never signed any filing or --

A I might have -- unless I had all the filings here, I don't know. I only know that the Georgeson letter was sent to our attorneys who filed these things. I am not sure.

Q You also testified that the information con-

tained in Item 4 on the original 13D, which is Defendant Trustee's Exhibit 7 for identification, relating to the purchase of stock transaction was supplied by yourself. I direct your attention specifically to the statement on Page 2, running over onto Page 3: "Depending on future circumstances not now known, D-Z may take such action from time to time as it may deem appropriate in light of future developments in order to obtain control of NJB for the best interests of NJB. Such actions may include: one, acquisition of NJB shares --" with matter following, which I have deleted.

A What is the question.

Q I just want to show it to you. (Handing.)

To the best of your knowledge, has that statement ever been modified or amended in any subsequent filing with the Securities and Exchange Commission?

A I don't recall any modification.

Q Directing your attention to Defendant Trustee's Exhibit 17 for identification, which is amendment No. 4, and particularly to the words in Item 3 on Page 1: "An additional $62,500 was borrowed from a bank and secured by a pledge of 25,000 NJB shares which are not otherwise encumbered."

To what loan does that sentence refer?

A Columbia National Bank.

Q When was that loan made?

A I think it was in May sometime; I am not sure.

Q Can you account for the fact that although that loan was made in May, it does not appear in any filing until the one dated July 17, 1974?

MR. WILD: Objectionable, argumentative, but the witness may answer, if he knows.

A I think it appears before that date.

* * *

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MR. SCHWARTZ: Would you please mark, Mr. Reporter, the letter dated March 15, 1974 on the letterhead of Security Management, addressed to Jacob M. Cath, which is a letter of four pages.

(Above-described document herein marked Defendant Trustee's Exhibit 25 for identification, this date.)

Q I show you Defendant Trustee's Exhibit 25 for identification, and ask you if you recognize this letter?

A Yes, I do.

Q Can you identify it?

A It is a letter I wrote to Mr. Cath.

Q You sent it to him on the date shown on the letter?

A Yes.

Q Did you receive any reply from Mr. Cath?

A No.

Q Were copies of this letter sent at the same time as the letter to Mr. Cath or to any other person or persons?

A No -- I take that back. I might have sent Ron Levin a copy. I don't remember. He is a member of our Board of Directors.

Q Did you draft this letter yourself?

A Yes.

Q Did you receive any assistance from any person in drafting it?

A No.

* * *

MR. SCHWARTZ: Mr. Reporter, will you please mark the letter dated March 22, 1974 on the letterhead of Cantor, Fitzgerald & Co. addressed to Bruce R. Davis, which is a letter of two pages, countersigned by Mr. Davis on Page 2. Please mark that as Defendant Trustee's Exhibit 28 for identification.

(Above-described document herein marked Defendant Trustee's Exhibit 28 for identification, this date.)

Q Mr. Davis, I show you Defendant Trustee's Exhibit 28 for identification, and ask you if you can identify that document?

A It is a letter I received from Cantor, Fitzgerald, the first of the letters.

Q How many other letters were there?

A I believe there was one April 16, one April 24 and the finalization, I think, was April 25.

Q Is the signature on the second page of that letter, your signature?

A Yes.

* * *

Excerpts from Deposition of Bruce R. Davis

MR. SCHWARTZ: Please mark as Defendant Trustee's Exhibit 30, Mr. Reporter, a copy of a one page letter dated April 16, 1974, addressed to Mr. Davis and showing a place for the signature of William P. Miller.

(Above-described document herein marked Defendant Trustee's Exhibit 30 for identification, this date.)

Q Mr. Davis, I show you Defendant Trustee's Exhibit 30 for identification, and ask you if you can identify it?

A It is a letter addressed to me from Mr. Miller relative to our understanding.

MR. WILD: In light of your now locating this document, I take it you are withdrawing the earlier request?

MR. SCHWARTZ: Since we have located, in the documents produced by Cantor, Fitzgerald, the copy of the letter of April 16, 1974, I withdraw the demand from plaintiff for the copy of that letter.

MR. WILD: Thank you.

Q Mr. Davis, was the letter of which we have just marked a copy, Defendant Trustee's Exhibit 30 for identification, signed by Mr. Miller and agreed and accepted to by yourself?

A I don't recall.

Q I showyou Defendant Trustee's Exhibit 17 for identification, this is the amendment No. 4 to 13D and, specifically, to Page 2 thereof, indicating that the last

purchase of NJB shares by D-Z was made on July 13, 1974 in the amount of 7200 shares, has D-Z made any purchases of NJB shares since that date?

A May I see that?

Q (Handing.)

A The last purchase shown is July 15.

Q I stand corrected. I was looking at the wrong page of 13D.

The last purchase shown is on July 15, in the amount of 400 shares?

A That is right.

Q Have any purchases been made by or on behalf of D-Z subsequent to that date?

A Yes.

Q What purchase or purchases was that?

A I believe there were two purchases, and I don't know the exact amounts because I haven't seen the confirmation yet.

Q To the best of your knowledge, what were the two purchases?

A One was 4,000 shares and one was 2,000 shares.

Q What were the date or dates of those purchases?

A I believe it would be the 16th or 17th. I believe that is right -- last Tuesday or Wednesday.

Yes, I believe it is either the 16th or 17th.

Q How were those purchases paid for?

A They haven't been paid for.

Q How will they be paid for?

A Cash.

Q Whose cash?

A It is through Hayden, Stone, but I haven't seen the confirmations, so I don't know.

Q How were they to be paid for?

A If it is on margin account, it would be on margin; if it is on cash, it is cash.

Q With respect to those purchase or purchases which had been made for cash and not on margin, what is the source of the cash?

MR. WILD: What is the source of the cash?

MR. SCHWARTZ: Yes.

MR. WILD: I object to the form of the question.

A You mean what is --

Q Go ahead.

A -- well, whatever cash D-Z doesn't have, as I said before, I will either advance Security Management or Ralph Becker or Saul Becker will advance.

Q Have you at any time issued any instructions

to any person or entity authorizing them to make any special volume of purchases of NJB shares?

MR. WILD: If the witness understands the question, I will not object.

A Just be a little more specific. I am not sure I understand.

Q Have you given any instructions to any person or entity to purchase NJB shares without further consultation with you?

A Yes.

Q When?

A Originally, when I started purchasing through Cantor, Fitzgerald.

Q When was that?

A April.

Q Is that instruction still in effect?

A No.

Q When was the instruction rescinded?

A Friday.

Q Which Friday?

A Whatever last Friday was.

MR. KILL: It was by court order.

MR. WILD: It was in connection with --

A July 19.

Q On July 19, and what did you tell Cantor, Fitzgerald on July 19?

A Cease purchasing.

Q What had been the instruction prior to July 19?

A Instructions were that if the stock came up to 4,000 shares cumulatively in a day, they could purchase without consulting me at the market.

Q Was there any ceiling on the number of shares which they might purchase in that fashion other than a daily ceiling?

A The agreement was day by day; if they went over, they would have to get my consent on the next day.

Q When you say, "if they went over", what do you mean?

A If they purchased in one day, 10,000 shares and got my permission and agreed and consummated it, the next day before they begin purchasing, they'd find out about the purchasing ability.

Q Are you aware, Mr. Davis, that on July 19, Judge Duffy entered an order staying purchases of NJB shares by you or on your behalf?

MR. WILD: Off the record.

(Discussion held off the record.)

A Yes.

Q Have you communicated your knowledge of that order to any person or persons?

A Yes.

Q To whom?

A Cantor, Fitzgerald.

Q To anybody else?

A Yes. I think I told Saul Becker.

Q Anybody other than Mr. Becker and Cantor, Fitzgerald?

A Not to my knowledge. I don't remember anybody else.

Q Are you aware that, by the same order, Judge Duffy stayed all solicitation of proxies or consents to the calling of the meeting of NJB prims?

A Yes.

Q Have you communicated your knowledge of that fact to any person?

A I might have said it to Cantor, Fitzgerald.

* * *

EXCERPTS FROM DEPOSITION OF WILLIAM SCHWARTZ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

D-Z INVESTMENT COMPANY,

Plaintiff,

-against-

ROBERT E. HOLLOWAY, MELVIN S. TAUB, MAURICE J. BRICK, PETER E. SIMON, NORMAN BRASSLER, CHARLES GILLER, HERBERT E. HARPER, DR., GORDON McKINLEY, JAMES R. MOSELEY III, JACK G. TAYLOR, DALLAS S. TOWNSEND, JR., and NJB PRIME INVESTORS,

Defendants, 74 Civ. 2379 (I.B.W.)

-and-

SECURITY MANAGEMENT CO., INC., CANTOR, FITZGERALD & CO., INC., BRUCE R. DAVIS, JEROME ZIMMERMAN, RALPH M. BECKER, SAUL LEVOW, HAROLD B. LEVIN, HARVEY JACOBSON, and SEYMOUR WEINBERG,

Additional Defendants to Counterclaims.

----------X

DEPOSITION of WILLIAM SCHWARTZ,

taken pursuant to Notice and Adjournment, held at the offices of Wachtell, Lipton, Rosen & Katz, Esqs., 299 Park Avenue, New York, New York

BENJAMIN REPORTING SERVICE
5 Beekman Street
New York, New York 10038
374-1138

on the 24th day of July, 1974, at 10:00 a.m. before Irwin H. Benjamin, a Notary Public of the State of New York.

oOo

APPEARANCES:

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BY: MICHAEL W. MITCHELL, ESQ.,
Of Counsel

WILLIAM SCHWARTZ, called as a witness, having first been duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. KANTOR:

Q State your full name and present home address for the record, please.

A William Schwartz, 63 Meade Street, Hempstead, New York.

Q How old are you, Mr. Schwartz?

A I am 54 years old.

Q And by whom are you presently employed?

A Cantor, Fitzgerald & Co., Inc.

Q And what is your job title?

A My job title is Vice President.

Q How long have you been employed by Cantor, Fitzgerald?

A Approximately four years.

Q And how long have you been a vice president?

A Approximately three years.

Q Could you just briefly describe your duties as a vice president of Cantor, Fitzgerald at the

present time?

A. At the present time I am trading over the counter, in certain special securities, such as warrants, convertible bonds and other kinds of securities.

Q. Are you registered as a broker with the NASD and the Securities and Exchange Commission?

A. With the NASD, yes.

Q. How about with the Securities and Exchange Commission?

A. I am not sure whether that requires a registration.

Q. Now, prior to becoming an employee of Cantor, Fitzgerald, can you just briefly describe to me your prior experience, if any, in the securities industry?

A. From 1967 through 1969 I worked for Arnold Bernhard & Co., Inc., publisher of the Value Line Investor Services.

Q. In what capacity, sir?

A. I was editor, publisher of the convertible service.

Q. Did you have any other work experience from 1969 to -- prior to 1967, rather, in the securities industry?

A. Yes.

Q What was that, sir?

A. 1965 to '67, for approximately one year I was employed by Arthur Weisenberg and Company, member of the New York Stock Exchange.

Q In what capacity, registered representative?

A. No, I was in the research department.

Q How about any job experience in the securities industry prior to the Weisenberg position?

A. Between 1961 and 1964 I was president of Investment and Management Compass, an investment advisor, registered with the SEC, and published investment service on convertible securities.

Q I take it in the period 1964 to 1966, you were out of the securities industry?

A. I was not in the securities industry as such.

Q How about prior to 1961, did you have any job related to the securities industry or any facet of the investment business?

A. No.

Q Are you a college graduate, sir?

A. Yes, sir.

Q When did you graduate college?

A. 1942.

Q. Do you have any post graduate degrees?

A. No.

Q. Your degree, I take it, it is a Bachelor of Arts?

A. Bachelor of Business Administration.

Q. What school is that, sir?

A. City College.

Q. Have you taken any academic courses on a nonmatriculated basis relating to the securities industry, securities law, securities regulation, since you graduated City College?

A. No.

Q. Are you aware of the fact that Mr. Orbe of your company has been deposed previously in this action?

A. I am aware of it.

Q. Have you read all or any part of Mr. Orbe's deposition transcript?

A. I read a part of it.

Q. Do you remember what part you read?

A. A few pages.

Q. Was it a part that mentioned you by name?

A. Yes.

* * *

Excerpts from Deposition of William Schwartz

14 * * *

Q Now, to whom, if anyone, do you report, sir?

A In most cases, I report to our president.

Q And his name is what?

A B. Gerald Cantor.

* * *

16 * * *

Q Have you ever heard of a company called D-Z Investment Company?

A Yes.

Q When did you first hear of it?

A I read it in the newspapers.

Q When was that?

A I would say it was around May of 1974, an article in the Wall Street Journal.

Q Was that the first time you ever heard of an entity called D-Z Investment Company, Inc.?

A Yes.

Q Prior to reading that article, were you aware that Cantor, Fitzgerald had a client by whatever name it might be, who was interested in acquiring shares of NJB Real Estate Investment Trust?

A Yes.

Q And what was your understanding as to the name or names of this client who had this interest in NJB?

A My understanding it was Bruce Davis.

Q Did you ever hear the name Security Management Company in that connection?

A I may have read it in the newspapers.

Q Now, when you read this article, whenever you read it, about D-Z Investment Company, did you realize that D-Z Investment Company was somehow related to Mr. Davis?

A Yes.

Q When did you first hear that Mr. Davis was interested in acquiring some interest in NB Real Estate Investment Trust?

A Probably in February or March of 1974.

Q And could you tell me how you learned this?

A I believe I was in Bill Miller's office; sometime in February; and he introduced me to Bruce Davis, a client of his; and there was some brief talk about his interest in REIT investments.

Q Do you remember anything about what was said about Mr. Davis' interest in REIT's?

A I recall the gist of the conversation was that Mr. Davis thought they were grossly undervalued, and he might have an interest of taking substantial positions in several of them.

Q Do you recall anything else said by anyone else at this meeting in Mr. Miller's office?

A Mr. Miller indicated to me that he would like to put Mr. Davis in touch with potential partners who might be able to contribute capital.

Q Was anyone else present at this meeting, besides yourself, Miller and -- when I say "meeting,"

I don't mean in a formal sense; I mean three people in the room. Was there anyone else in the room besides --

A. I don't believe so.

Q. Do you recall anything else that was said at this meeting?

A. I was asked whether I knew anybody who might have an interest in contributing capital for such a venture, and I told him I would think about it.

Q. Do you recall anything else that was said at this particular meeting beyond that?

A. No.

Q. Did you thereafter suggest anyone who might be interested in contributing capital for this possible venture?

A. Yes.

Q. And who was that?

A. Barry Silverstein.

Q. And what did you do, did you communicate that name to Mr. Miller, or did you do something else?

A. Since this was not my activity in the firm, I told Bill Miller that I would contact Barry Silverstein, and ask him whether he had any interest.

Q. And did you do so, sir?

A. I believe in one of these meetings, Mr. Orbe was

in the room, and I told Bill Miller that Barry Silverstein was in Florida, and told me, well, since Larry Orbe was traveling to Florida, that weekend, maybe they could get together.

Q I want to nail down specifically. Did you ever call Mr. Silverstein?

A I call him frequently; he is a client of mine.

Q In any of the conversations you had with Mr. Silverstein, did you mention the fact that you had a Mr. Davis, who was interested in REITs to Mr. Silverstein?

A I didn't mention Mr. Davis' name to Mr. Silverstein.

Q Did you mention you had a client whose identity you didn't disclose?

A I didn't indicate it was my client, but I told him it was a client of the firm who was interested in REITs.

Q Did you tell him that Mr. Orbe or someone else from your office might be in touch with him in that regard?

A Yes.

Q And thereafter, did you play any part in attempting to bring together Messrs. Silverstein and Davis, with respect to possible interest in an REIT?

A No. No.

Q Did you do anything else from whatever this was at the end of February or March, up until the beginning of June, with respect to Mr. Davis or Mr. Davis' interest in any REIT?

A No.

Q Is it a fair characterization that you played no part at all in any of the activities of Cantor, Fitzgerald with respect to Mr. Davis which might have eventuated in the months of March, April and May?

A That is correct.

Q Now, when, if any, did you have any contact, again, with Mr. Davis, or Mr. Davis' company, D-Z or Security Management, with respect to NJB prime?

A You are talking now about before -- before you talked about negotiations, and now you are talking about a contact.

Q What I am trying to ascertain, I am not --

A I may have said hello to Bruce Davis, if he was in the office.

Q Other than the fact that you may have casually waved to him as he went into the office, when, if ever, did you have anything to do with not only Davis, but anything to do with NJB and Davis buying any

shares in NJB or having any interest in NJB?

Do you understand the question, sir? I am not trying to trick you, sir.

A. We are eliminating just saying hello.

Q. Casual waving to people or acknowledging their presence.

A. My next contact with NJB was on June 13.

Q. Okay.

Just so we can go back, and there is no confusion here, in the months of March, April and May, you had no conversations with anyone in Cantor, Fitzgerald or outside Cantor, Fitzgerald with respect to Davis and/or NJB; is that right?

A. That's right.

Q. Now, on June 13, you again had a contact with Davis and/or NJB, and what was that, sir?

A. The contact was in reference to NJB stock, and the contact was with Bill Miller.

Q. And could you tell me what happened, did you go into Mr. Miller's office at that point?

A. No.

Q. Where did this -- was there a discussion between you and Mr. Miller at that time?

A. Yes; Bill Miller stopped by my desk, it was late

in the evening, and handed me a list of names.

Q And did he say anything to you?

A He said, "Here is some holders of NJB stock. We would like to buy some shares. Why don't you make some calls, and see if you can buy some stock."

Q Were you aware in the period in which you had any contact or direct involvement in the matter, that Mr. Davis and/or this entity of his, was attempting to acquire NJB shares, other than whatever you learned by reading the newspapers?

A The only information I have is what I saw in the newspapers.

Q In other words, you were not aware, I take it, from general office gossip or going out to lunch with them, that in fact, Cantor, Fitzgerald had undertaken a relationship with Davis to act for Davis in certain respects in relation to possible acquisition of NJB shares?

MR. KILL: I will object to the form of the question.

But you may answer.

A I have no specific information about it.

Q Now, did Mr. Miller say anything else to you on this occasion other than what you have just

testified to several moments ago? I am talking about the evening of June 13.

A. Yes. I think I might have asked him, "What the hell is going on?" Because I saw the story on the tape that day, that the annual meeting took place, and Bruce Davis was unsuccessful in getting what he was after. I think there was some lawsuits. He was unsuccessful.

Q. And what did he say to you, if anything, in response to that colloquialism you just testified to?

MR. BRAININ: So as to save time on the record, when Mr. Kill objects as to form, put me in as objecting as to form.

MR. KANTOR: You have got it. Any time he objects, I stipulate you object.

MR. BRAININ: Thank you.

A. To the best of my recollection, he told me that there was a possibility of calling a special meeting of shareholders, if 20 percent of the stock was in favor of such action.

Q. Do you recall anything else that either you said to Mr. Miller or Mr. Miller said to you on the evening of June 13, 1974 with respect to D-Z and/or NJB?

A. I don't recall any specifics.

Q. Now, did you ask Mr. Miller or did Mr.

Miller tell you how many shares you could acquire of NJB?

A. I asked Mr. Miller how many I could buy.

Q. And what did he say?

A. He said, "Buy five to 10,000 shares."

Q. In total or in any single time period?

A. I assume it was just a transaction, to buy five to 10,000 shares.

Q. It was your understanding that you were to acquire a total of five to 10,000 shares, and no more; is that right?

A. Well, I don't know what would follow that. My initial instructions was to buy five or 10,000 shares.

Q. Within what time period? Was this within the next day, two days, week?

A. There was no discussion of a time limitation.

Q. Did Mr. Miller say if more than five to 10,000 are available, you should go back to him or to Mr. Orbe or to anyone else?

A. Well, it was understood that if whatever contacts I had about buying shares, I would discuss it with him, if it was beyond the five to 10,000 authorization.

MR. KILL: By "him," you mean Mr. Miller?

THE WITNESS: Yes.

MR. KILL: Because you mentioned Mr. Miller and Mr. Orbe.

BY MR. KANTOR:

Q Mr. Orbe was not present at this discussion, was he?

A I don't believe Mr. Orbe was involved in this.

Q How about Mr. Davis, was he present?

A No, sir.

MR. KANTOR: Let me mark as 31, eight pages of listings of shareholders of NJB prime, which lists are typed, and which then have handwriting and various other markings on the typed document.

The eight pages, actually consist of two lists, page number 1 are NJB shareholders having more than 10,000 shares, and pages 2 through 8 are NJB shareholders having 1,000 to 10,000 shares.

(Eight pages of listings of shareholders of NJB prime, were marked as Defendants' Exhibit 31 for identification, as of this date.)

BY MR. KANTOR:

Q Now, Mr. Schwartz, I place before you what has been marked as Exhibit 31 for identification,

addressing yourself to the typed portion of the document only, is the typed portion of Exhibit 31 the document that Mr. Miller gave you on the evening of June 13?

A Yes.

Q And at the time you received Exhibit 31, was there any handwriting on it that you recall?

A To the best of my recollection, the only script on these pages was the notation on page 1, which indicates 546.150.

* * *

BY MR. KANTOR:

Q Keep that in front of you, the copy marked Exhibit 31, and I will keep this one.

Do you know, sir, who prepared the summary listing, Exhibit 31?

A I do not.

Q When Mr. Miller handed you this document, did he tell you from whence it came?

A No.

Q Now, thereafter, did you place handwriting on what has been marked as Exhibit 31?

A Yes.

Q Can you just run through the eight pages and tell me if there is any handwriting or markings on this paper in anyone's hand other than yours?

A I mentioned on page 1 --

Q The 546,150.

A Yes.

Q Other than that?

A. There is no other handwriting but my own on these pages.

Q. Now, can you tell me the time period or approximate time period in which you placed whatever marks you in fact placed on this document?

A. I believe the notations I made were done on June 14, June 17, June 18.

Q. Let's stop right there.

You appear to recall quite specifically that you had this discussion with Mr. Miller on the 13th of June?

A. Yes.

Q. And thereafter, you placed these marks on the paper in the time period of June 14 through 18.

Is there any reason why this is apparently vivid in your mind?

A. Well, the notations speak for themselves. Some of the notes have dates alongside of them, 6-14, 6-17, 6-18.

Q. Could I just look at your list for a second.

A. Yes.

Q. There is some writing on the bottom of page 1.

Can you decipher that as best you can. It is a very faint writing, I would admit.

A As best I can, when I started to make calls, I jotted down the bid and ask price of NJB prime, five and three-quarters, four and a quarter.

Q There seems to be some writing on the right of that. Can you tell me what that is. It is extremely faint.

A I could possibly get that from the original.

Q Okay.

And underneath this handwriting, 6 net, I guess, is that it?

A Yes.

Q What did that mean?

A With a bid and asked on the floor of five and three-quarters, six and a quarter, I must have discussed with Mr. Miller what I can pay for the stock, and he told me, "Pay the market," which in this case would be around six.

Q We are still now on the discussion of the evening of June 13; is that right, with Mr. Miller, or was this a subsequent discussion?

A It might have been the following morning.

Q Now, at the time Mr. Miller gave you these

two lists which have now been marked as Exhibit 31, did he give you any instructions or advice as to the purposes to which you could put this list or lists?

A No.

Q Did he in any way --

A Other than to buy stock.

Q Did he in any way tell you don't use this list for such and such a purpose or such and such a purpose?

A There was no discussion about it.

* * *

Excerpts from Deposition of William Schwartz

Q Did Mr. Miller at that time, advise you in words or in substance as to things that you could not use the list for?

A He did not.

Q Subsequent to this dissussion on the evening of June 13, did you have any discussion with Mr. Miller, again, as to your use of this list or lists, Exhibit 31?

A No.

Q Did you have any discussions with Mr. Orbe --

A Subsequent you said?

Q Subsequent to this June 13 evening, did Mr. Miller thereafter take up the subject of these lists and what, if anything, you could do with these lists?

A Yes, I believe there were discussions on June 18.

Q And who else was present at this discussion?

A To the best of my recollection, no one else was present.

Q Where did this discussion take place?

A In my room.

Q You mean the trading room?

A Yes.

Q What hour of the day, if you remember?

A I don't recall the exact hour.

Q And what did Mr. Miller say to you and what did you say to him?

A I believe the gist of his instructions were —

Q Hang on for a second.

Do you remember any specific words that he actually used? We will get to the gist later.

A No, I don't recall the specific words.

Q You don't recall specifically what he said to you and what you said to him; is that correct?

A That's correct.

Q Now, do you recall the substance of the conversation?

A Yes.

The substance was that I was not to use the list for the purchase — for the purpose of buying additional shares.

Q How long did this conversation take place? In other words, was it a half hour, five minutes, as best you remember?

A Maybe one minute.

Q Do you recall anything you said to him or the gist of anything you said to him at this particular meeting?

A No. I think he said he will get back to me in a little while. He had something else to do, and I had something and I had something else to do.

Q Now, have you had any subsequent conversations with Mr. Miller from June 18 up to and including the present time, concerning your use of the lists which have been marked as Exhibit 31?

A I believe he told me sometime in the afternoon of June 18, "You might call a few of the people and find out what their attitude toward management."

Q Did this conversation on June 18 take place after Mr. Miller had told you not to use the list for the purpose of buying additional shares?

A Yes.

Q So first he told you not to use the list for the purpose of buying additional shares, and then he had this subsequent conversation with you.

A. Yes.

Q. Do you recall the sequence, was it within a matter of minutes? Was it within a matter of hours?

A. As best I recall, it might have been four or five hours.

Q. Would it be fair to say that this first conversation was taken place in the morning, and the second conversation took place in the afternoon?

A. That's fair.

Q. Did you have any other conversations on June 18 with Mr. Miller about this list?

A. No.

Q. Now, did you have any conversations with anyone else at Cantor, Fitzgerald about this list other than Mr. Miller in the period June 13 to June 18?

A. Yes.

Q. Whom did you have conversations with about the list we are talking about?

A. On June 14, I had a conversation with Mr. Orbe.

Q. Now, when did that conversation take place, when and where?

A. I believe it took place in Mr. Orbe's office.

Q. Who initiated the discussion?

A. I inited the discussion.

Q You went into Orbe's office?

A Yes.

(Continued on page 37.)

Q Rather than him asking you to come in?

A Yes.

Q Why did you initiate this discussion?

A I told Mr. Orbe that there were many nominee names on the list. I didn't want to waste my time. Does he have any ideas of names I could avoid calling to save myself some time.

Q Okay. And what did Mr. Orbe say to you?

A Mr. Orbe thumbed through the list with me, and pointed out to possibly half a dozen names that it probably wouldn't pay for me to call these names.

Q Did Mr. Orbe tell you why it wouldn't pay for you to call those particular people?

A There might have been two -- a discussion of two possibilities. Number one, the names represented management connected people, who would be unreceptive to a call from us, or there might be shares that had already be sold by the holders.

Q Did Mr. Orbe say anything else to you at this meeting about this list, about these lists, Exhibit 31?

A There was no other discussion.

Q Subsequent to this discussion on June 14th with Mr. Orbe, have you ever had any discussions with

Mr. Orbe about the list from June 14th up to and including today?

A I believe there was some omissions on my list in that I couldn't find the location of the people, and we briefly referred to a larger list of shareholders of NJB, and I made some notations.

Q When you say "we," you are talking about yourself and Mr. Orbe?

A Yes.

Q When was that, sir?

A I believe it was on the 14th, possibly the 17th.

Q Do you recall anything you might have said to Mr. Orbe on either of these occasions, or it might have been one occasion, or anything he said to you?

MR. KILL: Other than what he has already testified to.

Q Yes, other than the fact that the two of you looked at a larger list, and you might have added names on your list. Do you recall anything that was said?

A He might have said, do you know any of these people?

Q Do you recall him saying anything else to you?

A No.

Q Other than whatever Mr. Orbe told you, that

you have already testified to, do you recall Mr. Orbe telling you, giving you any restrictions as to what you could do with this list?

A No.

Q Did you discuss this list in any manner, shape or form, with anyone else in the world other than Messrs. Miller and Orbe, as you have testified to this morning?

MR. KILL: And counsel.

MR. KANTOR: Always forget about counsel.

A No.

Q Let us turn, if we can, to Exhibit 31. Could you explain to us the significance of, if any, of the X marks on the first page, the large X marks next to four names, is that correct, sir?

A All right.

On the first one, Cede & Company is the nominee for the New York clearing house.

Q Is that what thatwriting means to the right?

A Yes, New York Clearing. Represents holdings of possibly dozens of member firms, and it was just not possible for me to make the call.

Q I think we can speed it up, if I could ask you a question at this point. Does the X mean those

were people you were not to contact or you did not contact?

A I didn't contact those names.

Q And you put an X on there to so indicate?

A Yes.

Q Can you tell me the reason why you didn't contact Comtru & Company?

A I didn't contact Comtrue, because I believe Mr. Orbe told me that they had sold those shares.

Q How about Jay & Company?

A Jay & Company is a nominee for Cantor, Fitzgerald. And those shares were in our firm name.

Q How about Tranco & Company?

A I was advised by Mr. Orbe that Tranco & Company may have sold those shares, and it would be a waste of my time to call them.

Q Now, all the other names on the list, other than Gerlach & Company -- I will amend that. All the other names on page 1 with the list, other than the ones that have an X next to it and Gurlach & Company, have a little dash or hyphen to the left of their name, what significance, if any, does that dash or hyphen have?

A I don't think the dash or hyphen has any significance.

Q In the right-hand corner, there is some

numbers, sort of next to Contru & Company. What are those numbers all about?

A They appear to be the total of the Contrue shares, and the Tranco shares, 12,110 and 41,219.

Q Now, do you know why you made that computation?

A Just eliminating two groups of shares that I would not contact because of Mr. Orbe's comment.

Q Now, you wrote the name Chase next to Kudd & Company?

A Yes.

Q What was the basis for your writing that name down there, and what does it mean?

A There is a book available to stock brokers indicating names of nominees, and who the principals are and Kudd translates into Chase Bank.

Q You understood at the time that you wrote the words Chase on there, that Kudd & Company was a nominee for Chase?

A Yes.

Q Did you contact -- by Chase, you mean Chase Manhattan Bank?

A Yes.

Q Did you contact any one of those entities, either Kudd & Company or Chase Manhattan Bank, did you contact any of --

A No, I did not.

Q Next to C.A. England, is written the word Chemical, is that Chemical Bank?

A Yes.

Q His England a nominee for Chemical?

A It is.

Q Did you contact either England or Chemical?

A No.

Q Next two, I guess it is Houvis & Company, you placed the words "First American Bank," is that correct?

A Yes.

Q With a telephone number?

A Yes.

Q And then you have written something else down there. Can you decipher what that something else is?

A W. Urbie Bright, III, vice-president.

Q Did you talk to that gentlemen?

A I believe I did.

Q And you spoke to him on June 14th, is it, is that correct?

A That's correct.

Q And what is this other writing next to or

on top of the June 14th, and underneath the June 14th?

A The writing on top of the June 14th notation says 6 too low.

Q What is the significance of the other writing there?

A 6/18, would represent June 18th, W.C. will call.

Q Did you ever purchase any stock from Hovus & Company?

A No.

Q Did you have any discussions with Mr. Bright, III, about whether or not Hovus & Company would join with the D-Z interests in opposing the existing management?

A To the best of my recollection, I did not.

Q Did you mention to Mr. Bright in either of these two phone conversations -- there were two conversations with Bright, is that correct?

A There is one on the 14th, where I got through.

Q And you did not reach him on the 18th, is that correct?

A I did not.

Q In the one conversation that you had with Mr. Bright, did you mention to him the possibility of there being a special meeting called of NJB shareholders?

A I don't believe we discussed it.

Q Did you discuss anything beyond the fact that you represented someone who was interested in acquiring the shares of --

A I conveyed to him that I was a buyer.

Q Did you convey anything beyond that?

A I don't believe so.

Q You had no discussions about whether or not they would be interested in joining forces with the person you represented in the event that they did not wish to sell?

A To the best of my recollection, I did not.

Q Did you mention anything about proxies, about soliciting -- about obtaining their proxy?

A No.

Q Did you ask them in words or substance, Mr. Bright, whether or not he would be interested in joining with someone that your company represented, in ousting present management?

A No.

Q Did you have any discussions with him at that time about your view, or the view of your company or the people you represented as to what you thought of present management?

A I don't believe we discussed management.

Q What, if anything, is the significance of the square around the $19,436? I don't believe it had any significance.

Q Now, there is a telephone number next to Alico Management, is that correct?

A That's correct.

Q Did you call someone at Alico Management?

A I believe I did.

Q When was that call made, if you can ascertain, and who did you talk to?

A To the best of my recollection, that call was made on June 14th, and I may have talked to -- I may have spoken to a Mr. Dover Dryden.

Q Now, to the right of the 10,000, there is some additional writing. Can you tell me what that writing is?

A Roger King.

Q Who is he?

A Roger King is an investment officer of Gulf Life Insurance Company.

Q Did you talk to him?

A I don't believe I got through to him.

Q Did you try to call him on June 18th?

A Yes, I did.

Q Does Mr. King have any relationship with Alico Management?

A I believe he has a relationship.

Q What is that relationship?

A I believe Mr. King at times makes investment decisions for Alico Management.

Q Did Mr. Dryden refer you to Mr. King?

A No, he did not.

Q How did you obtain Mr. King's name?

A I have done business with Mr. King before.

Q Do you know whether Mr. King owns any shares either individually or through some entity?

A Mr. King is an officer of an insurance company, and I believe one of their subsidiaries owns the shares that are in the name of Alico.

Q Now, what was your discussion with Mr. Dryden?

A I believe I conveyed to him that I was a buyer of NJB stock. He indicated that he had no interest in selling.

Q Did you have any discussion beyond that, sir?

A I don't believe so.

Q Without repeating all the questions that I

asked you about Houvis Company, if I asked you those questions, would your testimony be the same, that you had no such discussions with respect to Alico Management Company?

MR. KILL: I will object to the form of the question, but in order to expedite the examination, if you have recollection of the prior questions, I will permit you to answer.

Q The thrust of it, Mr. Schwartz is this: Did you have any discussions with either Mr. Dryden or anyone else on Alico Management's behalf, relating to possible call of a special meeting, proxies, joining an opposition group to present management, your feeling or the feeling of your client about present management, seeking to oust present management or anything of the like that I asked you about in relation to Houvis & Company? I am trying to speed this up.

A My answers would be the same, to the best of my recollection, we did not discuss these things.

Q Now, you have written more or less next to Alico Management Company, to the left, W.I.S., and a circle, what does that represent?

A W.S., those are my initials.

Q I am sorry, I thought the period was an I. Why did you write that in there?

A Well, when I reviewed this list with Mr. Orbe, and he asked me to, do I know any of the people on the list, it was one that I had indicated with my initial as my having done business with him before.

Q Now, next to Gerlach & Company, you have written the initials CNA in a circle.

A Yes.

Q What does that mean?

A I believe Gerlach & Company is a nominee for CNA, and it is one of the items Mr. Orbe told me would be a waste of time for me to call.

Q So you did not call either CNA, Gerlach or anyone representing Gerlach or CNA, is that correct?

A That's correct.

Q By the way, when were these calls -- let me check. I think I have covered it, but bear with me for a second. You have called Houvis & Company on June 14th, and you called Alico Management on June 18th, correct?

A I think I called Alico Management on June 14th, right after Houvis.

Q Now, on pages 2 through 8, you have some of these names in either brackets or circles. For example, Baldwin & Company, you have bracketed and Xed

out, and a circle around 5,000 shares. What is the significance of that?

A The first -- the bracket, I believe, has no meaning, it was just a doodle while I was making a phone call. The circle has no specific importance. My notation on the left means that I bought the shares.

Q And you wrote next to Baldwin & Company, FNB something or other and a telephone number, and a man by the name of Eldon Davis, can you decipher the meaning of all that?

A FNB is First National Bank of Montgomery. Eldon Davis is a gentlemen I spoke to.

Q And you spoke to Mr. Davis on June 14th, is that correct?

A That's correct.

Q I take it Baldwin & Company was a nominee for the First National Bank of Montgomery, Alabama, is that correct?

A Yes.

Q What is the meaning of the word "As a seller, 6-1/8th"?

A I believe I offered it for the stock. He indicated to me that he would sell at 6-1/8.

Q And what did you ultimately buy the stock

at?

A 6-1/8.

Q Did you say anything to Mr. Davis other than that you wanted to buy, and whatever negotiations eventuated from your willingness to buy?

A I believe we had no other discussion other than the fact that I was a buyer.

Q Next to the first name on page 2, Alten & & Company, can you decipher all the writing relating to Alten & Company?

A Yes. To the right, National Savings & Trust Company. To the left, an indication June 14th, 6/14. VanHouston, that would be the person I spoke with. His phone number. Not a seller.

Q There are two telephone numbers, one is 659-5411, and the other is 659-5492. Did you first call the bank, and the general number, and then they referred you to the specific number?

A I believe that is correct.

Q And Mr. Van Houston was the man you spoke to down there, you didn't talk to anybody else, is that correct?

A That's correct.

Q Is Alten & Company, a nominee for National

Savings & Trust Company?

A I believe it is.

Q After you were advised that Alten & Company, and/or National Savings & Trust Company, were not interested in selling, did you say anything else to Mr. Van Houston?

A I don't believe I did.

Q Did they indicate why they were not interested in selling?

A He gave no indication.

Q Did you make any statement to Mr. Van Houston concerning the possibility of a call of a special meeting, or ousting of management of NJB?

A I don't believe I did.

Q Atru & Company, can you decipher the writing next to that name?

A Colonial Bank & Trust, Phone No. 614-74. I spoke to Toni.

Q Who was a lady, I take it?

A Who was a lady, girl in parenthesis, and my comment "Not now" would indicate that when I told her I was a buyer, she told me she was not now a seller. And I have a notation "Left number. She probably asked me for my phone number.

Q To the right of the word not now, there is a word I can't --

A Left number, Left, and number sign.

Q Now, after this MS. Toni, which is her first name, told you that they were not a buyer at that time, did you have any discussion with this lady about the possible call of a special shareholders meeting of NJB?

A I don't believe I did.

Q Did you have any discussion with this young lady about your firm's views or the views of your clients about existing management of NJB?

A I don't believe so.

Q Do you have any recollection of having any discussion whatsoever with this young lady other than your attempt to buy the shares of Atru & Company, and her apparent lack of desire to sell them?

A No.

Q Now, Atru & Company was a nominee for the Colonial Bank & Trust Company, is that right?

A I believe so.

Q Next to Atwell & Company, you have written the words U.S. Trust.

Is that because you learned that U.S. Trust --

is that because you learned that Atru & Company was a nominee for U.S. Trust?

A Yes.

Q Did you call anyone at Atwell and U.S. Trust?

A No, sir.

Q Any reason why not?

A I didn't get around to calling the whole list.

Q There are no markings next to Bache & Company. Did you ever call Bache & Company?

A No, I did not.

Q Any reason why not?

A Generally member firms will not trade with our firm in listed stocks.

Q Why is that?

A Member firms are required to go down to the floor with all their orders.

Q Now, next to Barnett & Company, you have written the initials BT, what is the significance of that?

A It would indicate that it represents Bankers Trust.

Q Did you have any discussion with anyone at either Bankers Trust or Barnett & Company as nominee for Bankers Trust?

A I didn't call.

Q Any reason why you didn't call them?

A I didn't get around to it.

Q Now, next to the words Bauer & Company, you have written the word Shroader Trust, what is the significance of that?

A Bauer is a nominee for Shroader Trust.

Q You did not contact anyone at Bauer or Shroader Trust, is that correct?

A No.

Q Why not?

A I did not get around to it.

Q When you say you did not get around to it, is this because Mr. Miller's instructions to you on the morning of June 18th to stop seeking to acquire stock off this list?

A No specific instruction, I was told to try to buy stock, and I just my judgment as to who I would call and who I would not call.

Q I don't want to go over prior testimony, but you had testified earlier in the deposition, that on the morning of June 18th, you were told by Mr. Miller to no longer use the list for the purpose of buying additional shares, is that correct?

A Would you repeat that, please?

(Question read)

A That's correct.

Q What I am asking you is: You have testified now, repeatedly with respect to particular people on the list that you didn't have time to call them, and what I am asking you is, was the reason you didn't have time to call them, because of your adherence to Mr. Miller's instruction to stop using the list to buy additional shares? Which instructions was given to you on the morning of June 18th?

A I might not -- are we talking about specifically about Bankers Trust?

Q I am talking about specifically Bankers -- Schroader Trust, I guess, as well as all the other names that you said you didn't have time to call in the last five or ten minutes of which I think there were a half a dozen or so. We can go back over the list.

Is there any specific reason why you didn't call Bankers Trust or Barnett & Company, nominee to Bankers Trust?

A Well, there might have been two reasons why I didn't make calls. Number one, I felt a call wouldn't be worthwhile for me; in the case of several of the banks, I might not have called, because they were clients of other traders in our firm.

Q To back to my first question along this line, which was, is the reason that you didn't call the ones that you apparently were going to call, because of Mr. Miller's instruction to you or by request to you, use whatever adjective on the morning of June 18th, that you no longer use this list for the purpose of acquiring additional NJB shares?

* * *

(Question read)

A The question doesn't make sense to me; I don't know how to respond to it.

Q Let's march on. Next to the name of Beck & Company, there is a name and telephone number. Will

you tell me who this gentlemen is, and if you spoke to him?

A Beck & Company is a nominee for John Jay Rhein & Company. I believe it is one of the names that Mr. Orbe indicated would be unfriendly to our call.

Q That being the case, can you tell me the reason why there is a telephone number down there?

A Well, obviously, first I got the name that was represented by the nominee, and then I reviewed the list with Mr. Orbe.

Q Now, is it your testimony that you did not call or you do not recall calling John Jay Rhein & Co., Inc.?

A I did not call John Jay Rhein & Company.

Q The reason is that you did not call them is because of your discussion with Mr. Orbe, that they would not be friendly to your call, is that correct?

A I believe so.

Q You did not call, I take it, CBWL Haden Stone, Inc., is that correct?

A That is correct.

Q Next to the name Calhoon & Company, there is some writing, can you decipher that for me, please?

A It is an abbreviation for Manufacturers National

Bank of Detroit, I take it?

A Yes.

Q And there is a telephone number down there, that's their phone number, is that correct?

A Correct.

Q Who did you talk to?

A I have a notation that I did not get the name of the party I spoke to.

Q There is a what appears to be the name Vince Commings,directly on top of the 5500 shares, and there is also a notation underneath saying 6/14, W.C. will call, did not get name, and then you have the name Vince Commings, 6/18, no sale, does that refresh your recollection that you did ultimately reach a Mr. Commings on the 18th of June, after being unsuccessful reaching anything on the --

A I believe on June 18th, either I called Mr. Commings or he called me, and the gist of the conversation was that the stock was not for sale.

Q Just so the record is clear you did ultimately talk to Mr. Commings who is either with the Manufacturers National Bank and/or Calhoon & Company, nominee for said bank, and they were not willing to sell to you, correct?

A To the best of my recollection, that's correct.

Q Now, do you recall any conversation with either Mr. Commings or anyone else at the bank, about anything other than your willingness to buy on behalf of someone, and whether or not they were willing to sell to you?

A I don't recall any specific conversation other than the stock.

Q Do you recall any general conversation?

A I have no recollection on that call.

Q Can you test your memory a little bit. Do you have any recollection whether or not you mentioned anything about the possible call of a special meeting of NJB shareholders?

A I don't recall.

Q Do you have any recollection as to whether or not you asked Manufacturers National Bank in words or substance to join with your client in opposition to present management?

A I have no recollection of that.

Q When you say you have no recollection, does that mean that you have no recollection one way or the other or you have no recollection that you had this conversation? Do you understand the difference I am drawing here?

A I have no recollection that we had a conversation about a specialmeeting.

(Recess)

Q Next to the name Firnat & Company, you have written FNB Arizona, that's the First National Bank of Arizona,sir?

A Correct.

Q Did you contact anyone at that bank or this nominee for that bank?

A I did not.

Q Any reason for it?

A I didn't get around to it.

Q The next name, First Regional Securities, Inc., there is a telephone number and name there, can you decipher the name of the person you apparently spoke to?

A The name is a name of a firm called Legg, Mason, which is a member firm.

MR. KILL: Is the question did he speak to him?

Q Yes, did you talk to anyone from Legg, Mason, or First National Regional Securities, Inc.?

A I believe I spoke to the telephone operator.

Q And you did not get beyond the telephone

operator, is that correct?

A That's correct.

Q Okay. We can now go to the next name. Next to Friendly & Company, there are some initials as well as some writing underneath that name, can you tell me what those initials are, what the name is, and decipher your notes.

(Continued on following page)

A NBNA, National Bank of North America. Pat Mooney, his phone number, 6-14, and an indication that he would call. I didn't get through to him.

6-17, will call.

6-18, I was -- and the word says "conference," with a question mark. I was told he was in conference.

Q You were told he was in conference, or were you making that designation to indicate that you would have a conference with Mr. --

A No, I was told he was in conference, and I had a question mark, because it looked like he was avoiding me after three calls.

Q Did you ever meet with or have any telephone communication with Mr. Mooney or any other officer, agent or representative of the National Bank of North America, or Friendly and Company, as nominee therefor?

A Ever?

Q Yes.

A Are you talking about NJB?

Q In relation to NJB; all the questions are limited to NJB.

A No.

Q So the thrust of it is, you never had any

discussion with National Bank of North America or anyone on their behalf with respect to NJB, correct?

A. I may have left a message with Pat Mooney's secretary, giving him my name; and indicating I was a buyer of NJB stock.

Q. Do you recall leaving any message beyond what you just testified to?

A. No.

Q. And to the best of your recollection, Mr. Mooney or no one else on Mr. Mooney's behalf, on behalf of the bank, ever got back to you; is that correct?

A. That's correct.

Q. Next to Kane and Company, you have written the word "Chase." That's Chase Manhattan Bank; is that correct?

A. Yes.

Q. Kane and Company is apparently one of the nominees for Chase Manhattan Bank; is that correct?

A. Correct.

Q. Did you call the Chase or Kane in relation to NJB?

A. I did not.

Q. And the reason for not making the call, sir, was?

A I didn't get around to it.

Q Next to MEBA and Company, there are a number of notations.

Can you decipher those notations, and explain them?

A From left to right, phone number, Anthony R. —

Q Walker, it looks like?

A Walker; Fred Pildi, Bank of New Hampshire.

Q MEBA was a nominee of, for Bank of New Hampshire, sir?

A That is correct.

Q And then you have notations --

A June 14, will call.

June 18, sold some. None now; and I have a notation you may find difficult to read. It says, "less now." Less now meaning he has got less shares than 9,761.

Q Now, do you remember which gentleman you spoke to on June 18? Was it Mr. Walker or Mr. Pildi or possibly was it both of them?

A To the best of my recollection, I may have talked to Anthony Walker on June 14, and in his absence, on June 18, I spoke to Fred Pildi.

Q Now, did you say anything about the call

of a special meeting, possible call of a special meeting of NJB shareholders in these conversations, in either of them or both of them?

A I don't believe I did.

Q Did you say anything about you representing someone who is in opposition to present management of NJB?

A I don't believe I did.

Q Did you, in words or substance, when you were told that they were not a seller at that time, ask them to join forces with your client in opposing present management?

A No.

Q Do you remember anything else you said to either Messrs. Walker and/or Pildi other than what you testified to?

A I don't recall any other comments I had with them.

Q Did you call Merrill Lynch? They're the next name on the list.

A I did not.

Q By the way, let me ask you a general question.

To your knowledge, did anyone else in the

employ of Cantor, Fitzgerald or an officer or agent of Cantor, Fitzgerald, use this list or any copy thereof, to make any telephone calls to anybody?

MR. KILL: I will object to the form of the question.

I will permit the witness to answer, if you define the word "agents." It is too broad.

Q Anyone that Cantor, Fitzgerald may have designated to make telephone calls like any other company, like Georgeson & Company or anyone else in the world. He might have been retained directly or indirectly.

MR. KILL: To your knowledge, and the witness --

THE WITNESS: Repeat the question.

(Question read.)

Q To your knowledge, did anyone else in the world, anyone else than you, use Exhibit 31 or any copy of Exhibit 31, with or without handwriting on it, to call anyone on Exhibit 31, about anything pertaining to NJB shares?

A To my knowledge, no.

Q Now, can you decipher and explain your notations with respect to Milslate Company?

A. There is an indication First State Bank of Oregon. The phone number.

I corrected an error in the address, from Wisconsin to Oregon.

6-17, not a seller.

Q. Do you know what person or persons you spoke to at First State Bank of Oregon or its nominee, Milslate Company?

A. I have no recollection of who I spoke to.

Q. Can you tell me the substance of the conversation, which took place?

A. I believe I told them I was a buyer of NJB stock, and they indicateed that they were not a seller.

Q. Do you have any recollection as to whether or not there was any conversation with Milslate and/or First State Bank of Oregon with respect to possible call of a special meeting, your client's views towards present management of NJB, a possible attempt to oust the present management of NJB, or a solicitation of this bank's support in your client's position?

A. No.

Q. Oliphant & Company, did you call them?

A. No.

Q. The next name is J. Coir and Company.

They are a nominee for Chemical Bank, sir; is that correct?

A. I believe it is J. Coir.

Q. They are a nominee for Chemical Bank?

A. Yes, I believe so.

Q. Do you recall anyone over at Chemical Bank or J. Coir about NJB?

A. No.

Q. Paco. They are nominees for Security Pacific Bank in L.A., California; is that correct?

A. Yes.

Q. Did you call anyone at Security Pacific or Paco?

A. No.

Q. By the way, any reason why you didn't correspond with Chemical Bank, Paco, or Security Pacific?

A. I didn't get around to it, and it was a call I would not have made.

Q. Why is that?

A. They are clients of another member of our firm.

* * *

Excerpts from Deposition of William Schwartz

BY MR. KANTOR:

Q You didn't call Pershing & Company, nor Shearson, Hammil; is that correct?

A That's correct.

Q And the reason is that they are members of the New York Stock Exchange; is that correct?

A Correct.

Q H. A. Whitten & Company. You called them or Chemical Bank, correct?

A. Correct.

Q. By the way, I am sorry to be repetitive, Chemical Bank, has a number of nominees; I think we have mentioned their names three or four times. I think it is clear you didn't call Chemical Bank in any capacity; is that correct?

A. That's correct.

Q. Zereb in Portland, Oregon, did you call anyone on behalf of Zereb or its principals, sir?

A. Yes, on June 14, I believe I called U.S. National Bank of Oregon. I spoke to Ellen Wong.

Q. There is a name Don Bailey. Did you talk to a Don Bailey also on some other occasion?

A. To the best of my recollection, the telephone operator, switchboard operator gave me Dan Bailey who may not have been in, or may have been the wrong party to talk to, and I was advised to call Ellen Wong.

Q. Now, there is a 6-14, with a no, under or to the right of the Zip Code of Zereb.

Does that pertain to Zereb and First National Bank of Oregon, that 6-14, no?

A. I believe it does.

Q. No, you have got a bracket around the number of shares, and some other notations to the right

of the bracket.

Can you just decipher and explain those notations?

A I believe the bracket has no special meaning. BH stands for Beverly Hills with a question mark.

Ellen Wong advised me that Paul Cohen called.

Q Who is Paul Cohen?

A He is a salesman out of our Beverly Hills office.

Q I asked you previously whether anyone in Cantor, Fitzgerald, employee, agent, officer, director, representative, whatever, made any calls to anyone on this list, and you told me no.

A I didn't say paul Cohen called her in reference to this list. I said Paul Cohn called the Bank. It may be one of its clients.

* * *

Excerpts from Deposition of William Schwartz

Q You don't know -- isn't it a fact, as you sit here today, you don't know whether or not anyone else may have infact called some or all or any of these people on this list, with respect to NJB, do you?

A I have no knowledge, no.

* * *

Q Now, did Miss Wong say anything else to you other than that they were not interested in selling, and that Paul Cohen of your firm apparently regularly deals with her on other matters?

A To my recollection, that was the gist of my conversation with him.

Q Are you sure now that she did not say that Paul Cohen had previously contacted her in connection with NJB?

A No. She did not say that Paul Cohen had contacted

her with reference to NJB.

Q And you are very clear on that?

A Yes.

Q Now, do you recall whether or not you had any discussion with Miss Wong or anyone else from the bank that she recommended, as to a possible call of a special meeting, as to opposition to existing management, oust of exising management, then joining with your client, in any respect to support your client's position, or your solicitation in any respect of their proxy, or assistance or support?

A To the best of my recollection, none of these matters were discussed.

Q You have a notation with respect to A.R. Investment of the name of a Mr. Abe Rosenberg, and Starr Liquor, which he apparently controls. Did you call a Mr. Rosenberg, someone from Starr Liquor or A.R. Investment with respect to NJB?

* * *

A What was that question again?

(Question read)

A Yes.

Q Who did you talk to?

A I believe I spoke to a Mr. or Mrs. Silver.

Q First of all, you have Abe Rosenberg's telephone number, correct?

A Yes.

Q To the left of A.R. Investment?

A Yes.

Q Did you try to reach Mr. Rosenberg directly or personally?

A I believe I was referred to Mr. Rosenberg when I called the Syosett address.

Q And did you ever reach Mr. Rosenberg personally or directly?

A I recall speaking with Mr. Rosenberg.

Q Okay.

And just so we understand the sequence. You called the Syosett number and you spoke to a Mr. and Mrs. Silver. What was their capacity, secretary or executive assistant or something like that?

A As I recall, they were very hesitant in discussing anything.

Q And what was the substance of this conversation, they referred you to Mr. Rosenberg?

A Yes.

Q What did you tell this individual you spoke to, initially, this Mr. -- let's call him Silver, what did you tell the Silver person?

A I told her I was calling in reference to NJB Prime investors.

Q And did you say anything more than that, did you say whether you were interested in buying shares or did you say something beyond that?

A I believe she told me, he or she told me that I would have to talk to Mr. Rosenberg directly.

Q All right.

Let's just pause here for a second, Mr. Schwartz, if we may.

You said that you made some telephone calls on the 14th, 17th and 18th. You also related two conversations with Mr. Miller of the 18th. One was the morning and one was the afternoon.

Now, in the afternoon, with respect to the afternoon meeting, I think this is almost a verbatim state of what you said, you said Mr. Miller told you to call some people on the list, and find out their attitudes towards management?

A Right.

Q Was your call to Mr. Rosenberg with respect to the acquisition of shares or with respect to Mr. Miller's secretary's request of you; namely, to ascertain the attitude of some people on the list toward management, or was it with respect to both matters, the attitude towards management, and also the acquisition of shares?

I will give you the last alternative, or was it for some other purpose?

A I don't recall exactly whether this call was for the purpose of buying shares, or getting his attitude toward management, although my notes indicate that we did speak about management.

Q Just so we are clear on this.

Whatever discussions you had with Ms. Silver or whatever the gender of this person Silver, were they of a preliminary nature, did you get into anything of substance with this person?

A No.

Q Is it a fair summary, you mentioned you were calling ~~on behalf of~~ about MJB, and then she said you have to talk to Mr. Rosenberg, and she was very guarded; is that correct, or something of that substance?

A I told her I was calling on behalf of Cantor,

Fitzgerald, regarding an investment of A. R. Investment, and I wanted to talk to the proper party, and I was referred to a New York City number, Abe Rosenberg.

Q Now, did you at that time tell Ms. Silver that you were interested in possibly buying the investment that A. R. had in NJB or mention anything about ascertaining what their attitude was about existing management of NJB?

A I don't believe I had that kind of conversation with Silver.

Q It was a very general conversation; is that correct?

A She appeared to me to be a telephone answering service or his secretary, and I just tried to get from her the name of a person who would be in charge of investments.

Q And this conversation took place sometime in the 18th of June; is that correct?

A According to my notes, it was on the 18th of June.

Q Thereafter, you did call Mr. Rosenberg, as I think you indicated, several moments ago; is that correct?

A Thereafter, either I called Mr. Rosenberg or he

returned my call. I just don't quite recall exactly how it happened.

Q This number that you have under Mr. Rosenberg's name, do you happen to know if that is his home number or some sort of business number?

A. I would have no way of knowing.

Q This is a number that Silver gave you, correct?

A. Correct.

Q And you had this telephone conversation ultimately with Rosenberg; is that correct?

A. Correct.

Q And what did you say, and what did he say?

A. To the best of my recollection, I indicated to him that I was a buyer of NJB shares and the conversation may have gotten around to management by him asking me what's going on.

Q Did he raise management or did you raise management?

A. I don't have a precise recollection as to --

Q Check me if I am correct here, but it would appear to me that it would have been impossible for you, by your testimony up to now, to have had a conversation initiated by you in which you took up both

subjects, both the subject of acquiring shares, and the subject of management; isn't that correct?

A. That's not correct.

Q. Your testimony up to now has been that you used the list on June 14, 17 and 18, up to the morning of the 18th, when Mr. Miller told you don't call any more people on the list to acquire stock, solely for the purpose of acquiring shares; is that correct?

A. He told me not to buy any more shares from the list.

Q. Now, is it your testimony that in phone calls you made on the 14th, 17th and 18th, in addition to possibly discussion acquiring shares, you also discussed subjects other than acquiring shares?

A. That's possible.

Q. Did it in fact occur?

A. I --

Q. From the conversations you had prior to the afternoon of June 18, in addition to discussing the possible acquisition by you or clients of the shares of these folks, you also discussed subjects other than the possible acquisition of these shares?

A. That's correct.

Q. Now, let's go back to this conversation

with Mr. Rosenberg.

MR. KANTOR: Off the record.

(Discussion off the record.)

BY MR. KANTOR:

Q In other words, at the present time, you don't recall whether you initiated the subject of NJB's existing management or whether he initiated the subject; is that correct?

A Correct.

Q Now, do you recall what you said about management and what he said about management, if anything?

A I may have indicated to him that one of our clients is the largest shareholder in NJB; that he was dissatisfied with the way the company was being run, and there is a possibility that a special meeting of shareholders might take place sometime in the future.

Q You said you may have raised this. Can you be any more definite than that? Did you raise it or didn't you raise it?

A I can't be precise on it. The most I can do is refer to my notes, and recollect why I made other notes.

Q Is it your best recollection that you did make statements to Mr. Rosenberg, in words or substance,

to the effect that you just testified you may have made?

A I may have.

Q Now, when you made these telephone calls, did you have any documents or sheets of paper or any writings of any type at hand or in your possession, with respect to what you might or could say to these people?

A No.

Q In other words, what I am asking you, I will come right out, did you in fact have a script or a little card with a statement that you wrote out or somebody wrote out for you, which you then told these people or did each time you talk to them, did you talk out of your head, so to speak, extemporaneously?

A My talk was extemporaneous; I had no notes.

Q All your discussions with all these people on Exhibit 31, were extemporaneous, is that correct?

A Correct.

Q And other than that you may have made notations on this Exhibit 31, you made no memorandum or notes of these conversations, is that correct?

A Correct.

Q So far as you know, there are no other writings in the world, at least on your part, reflecting these

conversations, is that correct?

A Correct.

Q Now, did you in words or substance, state to Mr. Rosenb erg, that your client was seeking Mr. Rosenberg's support in his dissatisfaction with present management?

A No.

Q Well, when you said to Mr. Rosenberg, that one of your clients was the largest shareholder of NJB, and he was dissatisfied with management, and there was a possibility of a special meeting, didn't you understand, sir, that you were in effect, inviting this man to join with your client in his efforts?

MR. KILL: I will object to the form of the question.

* * *

Excerpts from Deposition of William Schwartz

(Question read)

Q With respect to NJB?

A To the best of my recollection, all I tried to do was get his attitude, should a -- should efforts be made to call a special meeting.

* * *

Q Did you understand at the time you made this call that one of its purposes was to inform shareholders as to the dissatisfaction of your undisclosed client with existing management, and merely to do this for the purpose of disseminating news?

A My call was either to buy stock or to obtain some idea of the attitudes of the person being called toward NJB Management.

Q And you were seeking to obtain from your standpoint a favorable attitude towards your client's position, isn't that so?

MR. KILL: That's not his testimony, and I will object to the form of the question. If you want to restate his testimony in this regard -- I am not restating anything. I am trying to find out facts.

A I was not trying to influence them. I was trying to find out how they felt.

Q Well, isn't it a fact that you were aware that your client, Mr. Davis, or whatever creature he was operating under, had in fact tried to block an annual meeting of NJB, isn't that a fact, you knew that?

A I was aware of that.

Q You knew that at the time you made all these calls, is that correct?

A Yes.

Q You said it was on the tape on June 17th, correct?

A Yes.

Q In addition you were in this office, and you

knew merely from being an officer of the company that in effect, Mr. Davis and those who were in there with him, were attempting to gain control of NJB Prime, isn't that so?

A I am not sure whether they tried to gain control.

* * *

Q D-Z, didn't you understand was attempting to obtain control of the management of NJB or in any event to influence the operations of the company by stock ownership?

A I am not sure whether they attempted to gain control. They wanted to communicate with shareholders.

Q You knew there was a lawsuit, didn't you?

A I knew there was court action.

Q And you knew that they had gotten the stockholders lists, isn't that so?

A Correct.

Q And you are a man who has twenty years experience in the securities field, don't you?

A Approximately.

Q And you knew, didn't you, that when somebody goes to court, and gets a stockholders list, more than not, a proxy fight or a control fight eventuates thereafter, or is part of the attempt to gain stockholders, you knew all this, didn't you?

MR. KILL: I object to the form of the question.

A It is either control or representation on the B oard, which might not mean control.

Q You knew at the minimum there was a difference of opinion between Mr. Davis and his associates, and existing management as to how things ought to be operated at NJB, didn't you?

A Yes.

Q And you knew Mr. Davis was interested in influencing present management or the operations of the company at the minimum, is that correct?

MR. KILL: I will object to the form of the

question.

Q Did you?

A Yes.

Q And you knew that perhaps Mr. Davis and his associates were ultimately interested in acquiring control of the company in the sense that we understood the word control, is that so?

A I had no specific knowledge about control.

Q What general knowledge did you have?

A I had a general knowledge that Mr. Davis wanted to communicate with shareholders and possibly get representation on the Board.

Q And this communication with shareholders, you knew was not to help existing management, isn't that so, he was not interested in buttressing existing management?

A He might have been interested in strengthening management.

Q But he was not interested in strengthening the present management, you knew that, didn't you?

A I had no present knowledge of his program.

Q Mr. Schwartz, you knew that Mr. Davis wanted to obtain representation on the Board, didn't you, and thereafter someone else had to get off, didn't you know that?

A I assumed he wanted representation on the Board, which might have strengthened the Board.

Q But it wasn't going to strengthen the existing control group in the company, you knew that, didn't you?

A I have no specific knowledge of that.

Q If Mr. Davis and you knew people were going to come in, you knew a man who had 20 years in the securities field, and had the experience you have had, and you are smiling to indicate that that's right?

A If the person who got off was incompetent, it would have strengthened the Board.

Q I don't care if they are competent or not, I am only interested in the fact that you knew that your client wanted to get on the Board in whole or in part and someone else had to get off, and you are smiling because we all know this is --

A Presumably he could have gotten on the Board by increasing the Board and nobody would have had to get off.

Q Mr. Schwartz --

A YOu are putting words in my mouth.

* * *

Excerpts from Deposition of William Schwartz

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Q What, if anything, did Mr. Rosenberg say to you after you recited to him the fact that you represented the largest stockholder, -- is dissatisfied with management, and the possibilities of a call of a special meeting?

A My notes indicate that he conveyed to me that all managements are out for themselves, and that he never votes his shares.

Q Do you know any reason why he advised you that he never votes his shares, if in fact, you were not seeking to obtain his vote?

A I don't know why he made the comment.

Q Did he just volunteer that out of the blue?

A I jotted down at the time I was talking to him the essence of his conversation.

Q What I am asking you is, did he just volunteer to you, unrelated to your conversation with him, the fact that he never votes his shares?

A I believe he did.

Q Did you ask him, in words or substance,

whether or not he would vote in a manner favorable to your client's views?

A I didn't solicit votes.

Q Solicit is a conclusion of law, and I move that that answer be stricken.

I would like an answer to my question.

A Repeat the question.

(Record read.)

A I did not.

Q What did you say about this, the possibility of this special meeting, can you add any flesh to the bare bones outline you have given us of this conversation, what words did you use when you referred to the special meeting, see if -- you have got an excellent memory, see if you can go back and tell us the words or the tone of the words you used?

MR. KILL: Or the words or what?

Q Or the tone of the words you used.

A Are we referring to Mr. Rosenberg now?

Q Yes, this telephone conversation, in which you outlined three things that you think you told him; A, was that your client was a single largest stockholder; and B, that your client was dissatisfied; and C, that the possibility existed of a special meeting. I am asking

you to try to give me the exact words you used with respect to all three matters, or if you can't do that, to give me the substance of the words you used?

A I am not exactly sure of my specific comments to Mr. Rosenberg about management or a special meeting.

I might have indicated to him that a client of our firm is the largest shareholder in NJB Prime, that he has been unsuccessful in gaining a voice in management, and that perhaps he might attempt to call a special meeting of shareholders if enough shares favored such a move; and I might have asked Mr. Rosenberg what his attitude might be should a special meeting be called.

Q Did you mention anything about the requirement of 20 percent of the shareholders?

A I might have said that 20 percent of the shares could possibly call for a special meeting.

Q And were you aware of the 20 percent requirement under the NJB bylaws and/or charter, is that correct?

A I got the 20 percent, I believe, in my conversations with Miller. I didn't read the bylaws or the charter.

Q I respectfully ask how you obtained it, you did have the figure of 20 percent in your knowledge

when you made these telephone calls, correct?

A Yes, I did.

Q Did you say to Mr. Rosenberg, that you represented a "proxy group," sir?

A I never used the phrase proxy group.

Q Did you tell Mr. Rosenberg that your client or the people associated with your client at that time had over a hundred thousand shares of NJB?

A I might have.

Q Did you state to Mr. Rosenberg in words or in substance, that he had a substantial block of stock of NJB, and that you were contacting people who had substantial blocks of NJB stock?

A I don't believe I referred to that.

Q Are you sure?

A I am sure. He didn't have a substantial block.

Q Did you say to Mr. Rosenberg in words or in substance, that you were calling to ascertain if he was interested in joining a group to call a special shareholders meeting of NJB to elect new trustees in?

A I don't believe I made those comments to Mr. Rosenberg.

Q I am not saying just merely those words, but anything in substance similar to those words. I said,

either in words or in substance?

A I don't believe I made those remarks.

Q Did you tell Mr. Schwartz that you were -- did you tell Mr. Rosenberg that you were seeking to round up NJB shareholders for the purpose of calling a special meeting?

A No.

Q Did you ask Mr. Rosenberg whether or not he would join in an effort to obtain a special meeting?

A I might have.

Q Did you tell Mr. Rosenberg whether or not you had contacted or intended to contact any persons other than himself who owned NJB shares?

A No.

Q Are you sure of that?

A I am sure of that.

Q Did Mr. Rosenberg ask you, am I the only one that you contacted, in words or substance?

A I don't recall him asking that.

Q He made no inquiry as to whether yor not you called other people, is that correct?

A That is correct.

Q Did you identify yourself, by the way, by name, and by your firm affiliation?

A Yes, I did.

Q Did you name your client"

A No, I didn't.

Q Did Mr. Rosenberg ask any questions about who your client was?

A He didn't.

Q Did you tell Mr. Rosenberg that your client wanted his support?

A No.

Q Did you tell Mr. Rosenberg that your client wanted to do something with NJB, something different than present management?

A No.

Q Did you make any comments to Mr. Rosenberg about what the current status of NJB was, namely that it was not profitable or that it had been poorly run?

A We didn't discuss it.

Q Did you make any statement to Mr. Rosenberg about whether or not the existing management of NJB is engaged in self-dealing or other improprieties?

A No.

Q Did you say in words or substance, that your client was part of a group that was opposed to the management of NJB?

A I believe that was understood by my conversation.

Q Well, did you say anything in words or substance that indicated that your client was opposed to the present management of NJB, and the way in which they were conducting themselves?

A I might have said that they were dissatisfied with management.

Q And that was what sparked Mr. Rosenberg's statement to you that "all managements are out for themselves," correct?

A I don't know whether that specific statement sparked the response.

Q But you did state to him in substance that your client was dissatisfied with management, correct?

A I believe I did.

Q And you also stated in substance that your client was dissatisfied with the activities and conduct of management, correct?

A In a general way, I indicated that we were dissatisfied -- that our client was dissatisfied with management.

Q As well as their activities and conduct, correct?

A Well, we didn't talk about activities and conduct.

Q Did you state in words or in substance that your client would do a better job for NJB, and for Mr. Rosenberg, and other shareholders than existing management?

A No.

Q Wasn't that really the direct implication, if it wasn't said, Mr. Schwartz?

(No response.)

Q You didn't tell them that your client would do a worse job, did you?

A No, I didn't tell them we would do a worse or better job. It wasn't my job to discuss this matter at all.

Q What hour of the day did you call Mr. Rosenberg, do you know?

A I don't recall the precise hour.

Q Starting with AR Investment, and continuing down to the end of the page, are the only people that you contacted persons or firms, rather, the persons or firms which have writing next to their names?

A No. The only one I contacted was Bank of California in Portland, Oregon.

Q How about Samuel Bluestein?

A I didn't contact him.

Q Let's talk about Bank of California. The Call Trust Department is a nominee for the Portland Organ, is that correct?

A Yes.

Q And you have their telephone number down there, do you?

A Yes.

Q And you have the date, 6-17, does that mean you spoke to him on 6-17?

A I probably put in a call on 6-17; and I have a note "Grignon will call."

Q What is SEC cage, is that securities cage?

A I believe I was referring to the securities cage by the switchboard operator, and the direct line to that cage.

Q And then you were referring to a Mr. Grignon?

A I was probably given the name Grignon. My notation, WC would lead me to believe that I didn't get through, then left my name, and phone number, and they indicated he would call me.

Q And you called them first on June 17, and then apparently on June 18?

A Yes.

Q And is the fact that you never got to go with Mr. Grignon?

A I believe we never spoke.

Q And you never spoke to anyone else from the Bank of California, Portland, Oregon, correct?

A Correct.

Q How about Sidney Berman, there is a notation of a plus sign next to his thousand shares on the list, what is that all about?

A In my reference to the big list, they are probably was probably six hundred shares attributable to a Berman at the same address.

Q Did you ever call Mr. Berman?

A No, I did not.

Q So, notwithstanding the fact that you apparently ascertained that he had additional shares, almost 16 or 1700, you didn't call him, correct?

A Correct.

Q How about Samuel Bluestein, next to that, is a name of a company, states sports maker, sportswear, something, can you decipher that?

A State Sportswear Pension Trust.

Q What does that mean?

A I probably compared the entry with the big list,

and found that the typist had left off part of the address.

Q Which was State Sportswear Pension Trust?

A Yes.

Q To the left, you have the name here of a Jack Burnberg, is it?

A Correct.

Q And a group of numbers, and you have 409 Carriage Lane, Wyckoff, New Jersey, who is Mr. Burnberg?

A One of the names on the big stockholders list.

Q And you just added this to the list?

A Correct.

Q It apparently was a name that was omitted from the list of people that had more than a thousand shares, is that correct?

A Well, the family group owned more than a thousand shares.

Q Did you call Mr. Burnberg or any member of the Burnberg family?

A No.

Q Now, we got Mr. Borneman, Of Short Hills, New Jersey, you got a telephone number next to his name. Did you call Mr. Borneman.

A I don't recall. It is possible that I called a number, and I got no answer.

Q Well, I am trying to get your best recollection. What is your best recollection, sir, that you did or didn't ever speak to Mr. Borneman of Short Hills, New Jersey?

A My best recollection is that I never spoke to Mr. Borneman.

Q Now, when did you attempt to reach Mr. Borneman?

A I don't recall.

Q Were you attempting to reach Mr. Borneman in connection with possible acquisition of his shares or in connection with this other task that Mr. Miller had given you, namely to ascertain the attitude of the shareholders towards existing management?

A I don't recall.

Q Well, is there any reason why you would have contacted Mr. Borneman to acquire his shares, do you have any reason to believe that you contacted him to a --

A I might have.

Q What is the basis to that reason? That you think you contacted him?

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A The same basis as my calling anybody else to buy shares.

(continued on next page.)

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Q Well, all the other people you appear to have called, appear to be banks or business entities as oppose to natural persons, isn't that correct, up to the point on the list, anyway, other than Mr. Rosenberg, who apparently was represented by a business entity, namely, A.R. investment, correct?

A Let me check my list.

* * *

Q Have you had time to review the list up to the point of Mr. --

A I don't know why this is the first individual that I put a call through. I don't think there is any ...ificance to it.

Q But that is a fact, that apparently was the first individual you put a call in to, at least in the list, in order of the list?

A That is correct.

Q Now, you have a telephone number to the left of Bruver & Company, did you call them?

A Yes.

Q You did call them?

A I called that phone number.

Q Did you talk to anybody?

A I believe I did.

Q Who did you talk to?

A I think the number represents the clearing house that registers nominees. I don't have a name.

Q Well, did you solicit their shares or discuss with them your clients attitude towards management or the possibility of a call of the special meetings?

A No. I could not find the principal for this nominee.

Q You don't know who this nominee represents?

A That is correct.

Q Now, Harriett Chase, did you call that lady up? She lives in Yarmouth Port, Massachusetts, I take it.

A Yes. I think I called her on June 18th. I am sorry, I don't know if I spoke to Harriett Chase or Donald Chase. My recollection is I spoke to Donald Chase.

Q And is Donald Chase Harriett Chase's husband,

as far as you know?

A I believe he was.

Q And between the two Chases, they have 2100 shares, is that correct?

A That's correct.

Q And when did you call up either Mr. or Mrs. Chase, was it on June 19th or 18th?

A I believe it was on June 18th, according to my notes.

Q Is that is what is written next to the zip code there, is it June --

A 6/18.

Q Because on my copy it could as well be a 9 or an 8.

A I am almost sure it was the 18th.

Q Fine. You placed an X next to Harriett Chase's name. What did that signify?

A I have a comment, "Supports management."

* * *

Q Did you seek to obtain for purchase by your client the shares owned by Mr. and Mrs. Chase?

A I may have.

Q Do you recall whether or not you discussed anything else with, I think it was Mr. Chase, other than possible purchase by your client of the shares owned by this husband and wife?

A Yes.

Q What did you discuss?

A I don't recall precisely, but from my notation, the conversation probably got around to management.

Q Do you know who raised management, either you or them, was it you or Mr. Chase?

A I don't recall.

Q Well, was this one of the calls that you made pursuant to Mr. Miller's request that you ascertained the feeling of block stockholders toward management?

A It might have been.

Q Do you recall whether or not you told Mr. Chase that you represented the single largest stockholder

in NJB, who was dissatisfied with management?

A I don't recall.

Q Do you recall whether or not you told Mr. Chase or Mrs. Chase, whoever you spoke to, as to the existence of a lawsuit, in which your client got a stockholders' list, and unsuccessfully sought to block the annual meeting?

A I don't recall that.

Q Do you recall whether or not you discussed the possibility of their being a special meeting of the shareholders of NJB with Mr. or Mrs. Chase, whoever you spoke to?

A I don't recall.

Q Do you recall whether or not you indicated that your client was in any way dissatisfied with management?

A I don't recall.

Q Do you recall whether you asked the recipient of the telephone call, either Mr. or Mrs. Chase, whether he or she, as the case might be, would join in an effort to obtain a special meeting?

A No.

Q Do you know how you learned that the Chases supported management? By that I take it you meant exist-

ing management, correct?

A Correct.

Q How did you learn that?

A I might have asked Mr. Chase what his attitude was toward management.

Q Is that the way you asked it, you just said sir, what is your attitude toward management, without introductory remarks?

A Well, there might have been some introductory remarks, but I don't recall exactly what they were.

Q Isn't it a fact that you told Mr. Chase, basically the same thing you told Mr. Rosenberg, that you testified you told Mr. Rosenberg?

MR. KILL: I will object to the form of the question. You went all over the parking lot on Mr. Rosenberg.

Q Other than those three points, namely, that you represented the single largest shareholder, that he was dissatisfied with management, and the possibility of a call of a special meeting, and you were seeking to find out whether or not the recipient of the call would join in an effort to obtain a special meeting.

MR. KILL: That's not his testimony with respect to Mr. Rosenberg, as I understand it.

MR. KANTOR: That sure was.

MR. KILL: I disagree. Perhaps we ought to clarify the record. I did not, for example, hear any testimony by the witness with respect to Mr. Rosenberg that the witness made any effort to obtain whether or not Mr. Rosenberg would join in any effort to call a special meeting.

MR. KANTOR: The record speaks for itself. I am not clarifying anything, or we will be here all day clarifying.

Q Did you say to Mr. Chase in words or substance that you represented a large stockholder, whether you mentioned the amount of shares or not, that was dissatisfied with management, let us stick to that for a minute.

A I might have.

Q And did you ask him whether or not he would be interested in seeing a special meeting of the shareholders of NJB take place?

A I might have.

Q And did you seek to ascertain from him whether or not he would join in an attempt to call such a special meeting?

A No.

Q Did you state in words or substance that your client was opposed to existing management?

A Yes.

Q Did you tell this gentleman why you were contacting him?

A Yes.

Q Did you tell him whether or not you were contacting others?

A No.

Q Did you identify yourself by your name and your firm affiliation, correct?

A Correct.

Q You did not identify the name of your client or clients, correct?

A Correct.

Q And as a result of what you told this gentleman, he told you he was satisfied with present management, correct?

A I believe that was the substance of his remarks.

Q And after he told you that, did you say anything further to him?

A No.

Q And was that the end of the telephone conversation?

A That was the end of the conversation.

Q And what does the X signify, anything in particular?

A I --

Q It has no specific meaning, correct?

A It might indicate an attitude of unfriendliness to our -- to my call.

Q Now, did you call either Catherine Collins or Robert Alan Daniels?

A No.

Q Someone apparently filled in the state in which these people reside, is that you?

A Looks like my handwriting.

Q But you didn't call them in any event, is that right?

A No.

Q What about the Deyos, George W. and Mary A. Deyo?

A I called Mr. Deyo.

Q Did you speak to both Mr. and Mrs. Deyo, or did you speak to just Mr. Deyo?

A To the best of my recollection, I spoke to Mr. Deyo.

Q And at the time you spoke to Mr. Deyo, did

you ask him whether any relationship he had to Mary A. Deyo?

A I did not ask him that question.

Q Now, the Deyos apparently were family members of the Deyo family, who apparently owned a total of 3500 shares, is that correct?

A 3900 shares.

Q But in any event, you showed 1700?

A Yes.

Q There is a notation --

A Jr., George Deyo, Jr.

Q That apparently is a child of these people?

A Probably a son.

Q Now, you made a double X next to their name after you made this little swiggle.

What does a double X mean?

A It indicated to me an unfriendly attitude towards my call.

Q And you wrote down "They are not too unhappy with management," is that correct?

A Yes.

Q And you learned that as a result of your telephone call, is that correct?

A Correct.

Excerpts from Deposition of William Schwartz

Q Did you attempt to obtain for purchase by your client the shares of all or either or George W. Deyo, the son, Deyo, Jr., and/or Mary A. Deyo, the mother?

A I may have.

Q Did you discuss the attitude of the Deyos towards existing management with Mr. Deyo?

A Yes.

Q That's what brought forth this assertion by them that they were not too happy with management, correct?

A Yes.

Q Did you identify yourself by name and by firm affiliation?

A Yes.

Q Did you indicate that you represented the largest shareholder of NJB, who was dissatisfied with

management?

A I may have.

Q Let us put aside whether or not you represented the largest shareholder.

Did you represent to these people that you represented a stockholder who was dissatisfied with management, whether or not he was the largest or not?

A Yes.

Q And did you mention to these people the possibility of an attempt to obtain a special meeting of the shareholders of NJB?

A I may have.

Q And did you question them as to whether or not they would join in an attempt to get a special meeting?

A No.

Q You did not?

A No.

Q You just asked them, you just told them there was a possibility of there being a special meeting of the shareholders, is that correct?

A Correct.

Q But you did not think to ascertain, according to your testimony, whether they would be in favor of such

a meeting, is that correct?

A Well, that's different than the question you asked me before.

I probably tried to find out what their attitude would be towards a special meeting.

Q You attempted to find out whether they would be favorably inclined towards the call of a special meeting, correct?

A Yes.

* * *

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Q Did you call up the Drockers, Harry and Sophie?

A No.

Q You wrote down "do not call," correct?

A Correct.

Q Any reason for that?

A I believe I got some information that I was not to call these people, because someone else had been in touch with them.

Q Do you know who was in touch with them?

A I do not.

Q Do you know the circumstances under which somebody was in touch with them?

A No.

Q Are these one of the people that you were told not to call when you went through the list?

A I believe so.

Q But you don't know the basis on which you made that statement?

A No.

Q All right. Let us try Hyman Dushman, you have a telephone number next to the gentleman, did you call him?

A Yes, I called him on the 18th.

Q And there is a notation, 6/18. There is a word crossed out --

A My first notation was "no answer," and I crossed that out, and someone must have picked up the phone and told me he was out.

Q And you have "will call".

A I left my phone number.

Q Did he ever call you?

A No.

Q Do you know who you spoke to at the Dushman household?

A I don't recall.

Q Apparently Mr. Dushman was the owner of 1900 shares, or so you ascertained, is that correct?

A That's correct.

Q And you wrote in --

A Mr. Dushman's family.

Q The Dushman family?

A Yes.

Q You wrote in 400 and 300 under the typed in 1200, coreect?

A Correct.

Q Did you call JNB Company in Jacksonville, Florida?

A Yes.

Q And what does the check mean next to their name?

A I think there is a back reference to an entry on the next page.

Q Who is JNB Company, Jacksonville, Florida?

A Jacksonville National Bank.

Q That's a nominee for them, right?

A I believe so.

Q Did you call the Ellis family, Ena Ellis of Bloomingdale, New Jersey?

A Yes.

Q Who did you talk to there?

A I believe I talked to Ralph Ellis.

Q Q Who is he? The husband?

A I assume he was the husband.

Q And you called when, on June 18th?

A June 18th.

Q Now, you have got all types of notations here. Next to June 18th, you have "no int.,"what is that?

A No interest.

Q And then you had 2700, apparently, the Ellis family, Bloomingdale, New Jersey owned 2700 shares?

A I would think that they owned 2700 total.

Q 2700 in total?

A Yes.

Q And you ascertained that from the large stockholder list, is that correct?

A Correct.

Q Then after that, you have a notation, may be in touch with something, can you decipher that for me?

A May be in touch with management.

Q Then you have that Ralph apparently called back, is that correct?

A Correct.

Q And you made a notation, "what is our plan for company, told him we will send him material." Did you ever do that?

A No.

Q You never sent him anything?

A No.

Q Why didn't you send him anything?

A I had nothing to send him. He asked me for details of what our plan was.

I told him that when we had anything to send him, we would do so.

Q You made the notation "told him we would send him material," correct?

A Correct.

Q And you thereafter never sent him anything, correct?

A Correct.

Q Is the reason you never sent him anything,

because u smelled a rat, so to speak, you thought he might be an agent for management?

A The reason I didn't send him anything, because I had nothing to send him.

Q Isn't it also, you wrote "aay be in touch with management on the side," next to the phrase that you will send the material, correct?

A If I --

Q Is it or is it not correct that you wrote "may be in touch with management" to the side of the statement "told him we will send him material," yes or no?

A That is not the reason I didn't send him the material.

Q Sir, confine yourself to a yes or no answer, and if you want to give me an explanation, then give it to me.

A Give me the question again.

(Reporter read back question.)

MR. KILL: The document speaks for itself, and all sorts of notations.

Q Let us go on. That is written, and there is no dispute about it.

Didyou write the phrase --

our remedies. Let us go.

Q When did you put the phrase "may be in touch with management" on the paper, was it after you put the phrase on the paper "told him we would send him materials," or was it after?

A I don't recall.

Q You don't recall one way or the other?

A No.

Q Did you tell Mr. and Mrs. Ellis, whoever you spoke to, that you represented a client who was dissatisfied with the management of NJB, who was a shareholder?

A I believe I did.

Q Did you mention the possibility of a special meeting of shareholders of NJB?

A Yes.

Q Did you question the recipient of the call as to whether or not they would be agreeable to a call of a special meeting?

A Yes.

Q Did you try to buy the shares of the Ellis family or any of them in this phone conversation?

A I don't recall.

Q Okay.

Did you contact a Frederick H. Gasbell, who

apparently has an address at One Broadway, New York, New York?

A No, I did not.

Q What are those notations next to Gasbell's name, what do they mean, if you would be good enough to decipher them for me?

A There was an error in the spelling of a name, in reference -- in my looking at the big list, I found that he was a trustee of the Fred P. Gasbell Pension Plan, or something like that.

Q And you made that correction, but you didn't call, is that correct?

A That's right.

Q Let's keep going.

You contacted a Mr. Gaunt, who apparently could be reached in care of CIBA Company, is that correct?

A I did not contact Mr. Gaunt.

Q I'm sorry. On the piece of paper on the list, you made a notation that Mr. Gaunt was in care of CIBA Chemicals.

A Yes.

Q And you added some additional shares that you apparently already had. Did you ever try to contact Mr. Gaunt?

A No.

Q Okay, fine.

One, Sidney L. Gimbel, Chicago, Illinois. There is a notation next to his name. What does it say, can you decipher it, please?

A He was a trustee of the -- something Evans Trust.

Q Did you try to contact Mr. Gimbel either individually or in any capacity that he may have had?

A No.

Q Cynthia Goldman, Randolph, Massachusetts, you apparently ascertained that she had no telephone number, correct?

A Right.

Q Therefore you never contacted her, is that accurate?

A That's accurate.

Q You corrected the name of Gouod, Investors Trust, Great Neck, New York?

A I corrected that.

Q And you learned that a Mr. Stuart Gouod owned an additional 500 shares, correct?

A Correct.

Q And you so noted on Exhibit 31, correct?

A Correct.

Q Did you try to contact either Gouod Investors Trust or Stuart Gouod?

A No.

Q Did you attempt to contact either Bruno Herman or Esther Herman who live in Clifton, New Jersey?

A No.

Q Did you ascertain if these people owned an additional 400 shares to the 1500 shown in the typed portion of the list, is that correct?

A That's correct.

Q There are several telephone numbers. What are these?

A Probably I got the first phone number at the Clifton, New Jersey address, and I was given a second number, where I might reach Mr. Bruno Herman in the p.m.

Q And you called that second number, correct?

A Yes.

Q In any event, let's not dwell on specifics. You apparently did talk to Mr. Herman, correct?

A Yes.

Q Are you sure that you spoke to him rather than the wife, correct?

A Probably spoke to the wife first, when she answered

the phone.

Q Preliminarily, and then you spoke to the husband?

A Right.

Q Was your understanding that those people were joint owners of whatever stock they might have had in NJB?

A Yes.

Q And the upshot of the conversation was what, sir?

A My comment after making the call was that he couldn't do anything, because he was close to Brassler.

Q And you put the double X in there, indicating negative to your client's position?

A That's correct.

Q Did you try to buy some or all of the shares of the Herman family?

A I might have.

Q Did you point out to Mr. Herman that you represented a client who is dissatisfied with the existing management of NJB prime, REIT?

A I believe I did.

Q And did you point out the possibility of the existence of a special meeting of the shareholders of NJB

prime?

A The existence of a special --

Q The possibility of there being a special meeting of the shareholders?

A Yes.

Q And did you ascertain from Mr. Herman whether or not he would be ameanable to such a meeting, or agreeable to such a meeting, pick any word you like.

A No.

Q Didn't you seek to ascertain from Mr. Herman whether or not he would be in favor of there being a convening of a special meeting of the shareholders?

A I think your first question was --

Q Forget my first question, let us stick to my last question.

You sought to ascertain, did you not, and maybe we can save a lot of time, you sought to ascertain with this gentleman, as you did with all these other people you spoke to, whether or not they would be in favor of convening of a special meeting of shareholders of NJB?

A Yes.

Q Unfortunately, I phrased the question many different ways. I have tried to ask the same question,

but I am not an IBM machine, and a lawyer will keep changing the questions, not out of purpose or design, but it is just impossible to ask the same question, unless I write it down.

Now, you also indicated, did you not and if I asked the question, bear with me, that your client was dissatisfied with present management?

A I might have, yes.

Q And that solicited the statement from these people that they can't do anything, because they are close to Brassler, correct?

A Correct.

Q And you knew Brassler at that time was part of the present management group, correct?

A Correct.

Q Subsequent to them telling you that they couldn't do anything with their relationship with Brassler, did you say anything more to them?

A No, I did not.

Q Did you try to contact a D.F. Henry in Whippoorwill, New York?

A No.

Q What is all that has been written in between Herman and Holland, with respect to Henry, Whippoorwill,

New York?

A It would appear that two 500 share blocks were attributable to that address.

Q But you didn't call these people?

A o.

Q How about one, William Hummel of the First New Haven National Bank, did you try to get ahold of him?

A I don't believe I ever completed getting his phone number.

Q You got as far as the area code, and you abandoned it?

A Yes.

Q Now, previously you told us about the Jacksonville National Bank, when I asked you about JNB Company, let us talk about them.

Did you talk to anyone from the Jacksonville National Bank or JNB Company, its nominee?

A Yes, I spoke to Mr. Berle.

Q And when was that?

A On June 17th.

Q And what did you say to him and he say to you about this, about this matter of NJB, did you try to solicit the bank's shares?

A I believe I told them --

MR. KILL: Again the word "solicit".

Q Well taken. Did you try to obtain the purchase of the shares of the bank in NJB prime?

A I told them I was a buyer of NJB shares.

Q And what did he say to you?

A He told me he could not make a decision, and referred me to Frank Scott at a different number.

Q Frank Scott is an entity called the Charter Company, correct?

A That's correct.

Q Is that some sort of an affiliate of the Jacksonville National Bank, or advisor of these people?

A I believe there is some affiliation.

Q Now, above the 5300 shares, you jotted down 2200. What does that mean, that they owned --

A 2200 shares from the previous page.

Q The 2200 shares?

A Right.

Q They had 7500, correct?

A Correct.

Q What was the upshot of your decision with Mr. Scott, did you reach him?

A I believe I reached his secretary. Her name was

Wylene. I told her I was a buyer of 5 to 10,000 shares at $6 a share.

Q And --

A She said that someone would call me back.

Q Did she ultimately call you back?

A I believe Frank Scott or his associate called back.

Q What happened?

A They told me that they could not sell the shares.

Q Did you attempt to ascertain their attitude towards existing management?

A Yes, I did.

Q What did you say, sir?

A I told him we represented the largest single shareholder; that he was unhappy with the management of the company, and that he might be in favor of calling a special meeting of shareholders if 20% of the stock could be -- if 20% of the shares were in favor of such a move.

Q Did you attempt to ascertain their feeling or attitude towards existing management?

A I probably tried -- no, indirectly, I probably tried to attempt to find out their attitude toward this kind of a move.

Q And what did they say?

A To the best of my recollection, they told me that

they were a public company, and they could not comment on this matter.

Q You think you had this conversation with Mr. Scott?

A Mr. Scott or his associate, I don't recall.

Q And when did this conversation take place, to the best of your knowledge?

A Either on the 16th -- on the 17th or the 18th.

Q Did you place a call to the Johnson Manufacturing Company at Boonton, New Jersey, or any representative of --

A Yes.

Q When did you make that call, sir?

A I believe it was on June 14th.

Q Now, you got a notation down there of a John E., and I can't read what is in the right of that June 14th. What does that say?

A I believe there was Eric, Joe Henson and/or John E. Henson, or partners of this company.

Q Next to 6/14, there is something written, some words, can you tell me what those words are?

A Too low. It would indicate that they told me that he paid much higher for the shares, and they couldn't sell them at these levels.

Q To the right of the words "too low," what you have interpreted as too low is yet another word.

A I have a notation there "left number." I left my phone number. He probably asked me for it.

Q Let's see. You have got the greatest pair of eyes I have ever seen. I can't --

A It is something I recall of the conversation.

Q Okay. Here again, if we had the original copy of this document, we wouldn't --

MR. KILL: So far he has deciphered it pretty well, I think.

MR. KANTOR: He has done admirably, I must say.

Q Do you know who you spoke to there, John or Eric, or both?

A I don't recall exactly who I spoke to.

Q It was either John or Eric, you know that?

A Yes.

Q Did you discuss anything, whichever John Hansen you spoke to, beyond whether or not they would be willing to sell some or all of the shares to your client?

A No.

Q You did not attempt to ascertain their attitude towards existing management, did you?

A No.

Q Any reason for that why you did not, why you did not attempt to ascertain that from them?

A I have no specific reason, no.

Q Were you attempting to ascertain the attitude of people toward the management prior to June 18th?

A Not primarily.

Q But on June 18th, you were, correct?

A I believe --

Q You were attempting to ascertain the attitude of --

A Yes.

Q You did, however, apparently, on June 17th, you spoke to the Jacksonville National Bank, try to ascertain their attitude toward management, correct?

A Yes.

Q Maybe we can't generalize at all, is that correct?

A Well, sometimes the conversation was turned by comments that were made by people I called.

Q Okay.

One Aaron Koenicy, Cedarhurst, New York. You wrote down area code, an additional stockholding that the family or he apparently had. Did you try to contact

Mr. Koenicy or anyone representing Mr. Koenicy?

A I tried to get his phone number and was unsuccessful.

Q Now, you got a notation here next to Greater Jersey Bancorp. You didn't attempt to call them, did you?

A No.

Q And what are all these notations about Messrs. Brassler and Taub?

A I believe Greater New Jersey Bancorp was associated with or controlled NJB prime, and the shares appeared to be the shares of two directors, 5100 shares.

Q You didn't call Brassler, and you didn't call Taub, and you didn't call Greater New Jersey Bank, is that correct?

A Correct.

Q Did Mr. Orbe point out to you that these were people to be avoided?

A He might have.

Q Now, to the left or slightly below the Greater New Jersey Bank, you have a Richard Bussman, somewhere in Florida. Did you call him?

A No.

Q You added that to the list, however?

A Yes.

Q You have noted here a Jepco Retirement Fund, somewhere in Jonesboro, Georgia. Did you call them?

A No.

Q On Alick Levine, Passaic, New Jersey, I have a bunch that is misspelled, did you attempt to call Mr. Levine?

A Yes.

Q And you have added some additional shares here. What is this additional 976 shares?

A I believe it was shares of A. Levine at the same address.

Q Was it a child or wife?

A It could be. I don't know exactly.

Q Now, you called, is it Mr. Levine, is it, Alick Levine?

A I assume it is Alex.

MR. KILL: It could be Alice.

Q That's what I am trying to find out.

Was it a lady or a man?

A To the best of my recollection I spoke to a man.

Q Let us just refer to the person as Levine, to save a lot of time.

When did you call A. Levine?

A On June 17th.

Q And did you attempt to solicit the purchase of shares of A. Levine or the shares that other Levines at the same address owned?

A Levine --

MR. KILL: You used the word "solicit" again.

MR. KANTOR: Good Lord, it is automatic.

Q Attempt to attain for purchase.

A I tried to buy his shares.

Q And was there any discussion between you and A. Levine beyond your attempt to purchase the shares of the Levine family?

A Yes.

Q And did you tell A. Levine that you represented a shareholder of NJB, who is dissatisfied with management?

A Yes.

Q Do you recall whether or not you made the statement that they were the largest shareholder -- single shareholder of NJB?

A I might have.

Q Did you discuss the possibility of a call of a special meeting of NJB shareholders?

A I might have.

Q Did you ascertain whether or not A. Levine was favorable to such a call of a special meeting?

A No.

Q You didn't seek to ascertain that?

A No. You asked me whether I --

Q Let us not dwell on it. I think I know what your problem is.

A You asked me whether he was favorable, and I said no.

Q But you attempted to find out what his attitude was?

A Yes.

Q Whether or not he did or did not favor such a meeting?

A Yes.

Q And he apparently told you in words or substance that he was not favorable to such a meeting, correct?

A My specific no indicates that he was skeptical about us. I don't know whether he referred to Cantor, Fitzgerald or the largest shareholder.

Q Did you tell him who you represented, for example?

A I don't believe I mentioned names.

Q You didn't identify who you represented?

A I identified Cantor, Fitzgerald as being my firm.

Q Throughout, you testified way back in the beginning, and I haven't really asked you too many times, and I assume it is true throughout, that in every telephone call you gave your name, and you told them who you were?

A Yes.

Q So we are past that now.

What I am trying to find out is, did he know who you were, in other words, or was he just skeptical about anyone who wanted to oppose existing management?

A I don't know what his feeling was about anyone. I had the feeling he wasn't sure about who we were.

Q Let us just nail it down.

Did he ask you who you were, and did you tell him anything about who you were, by who you were, I mean the principals or the people who were your clients?

A Yes.

Q He asked you?

A Yes.

Q Did you tell him?

A I did not mention the name of my clients.

Q Did you say anything about what your clients' intentions were with respect to NJB?

A I might have, yes.

Q Do you remember what you said?

A To the best of my recollection, I told him that our client was dissatisfied with the management of NJB prime; that there was a possibility that 20% of the shareholders could call a special meeting, and I tried to determine what his attitude might be towards such a meeting.

Q And he told you in words or substance that he was not interested in supporting such a meeting, correct?

A Yes.

Q By the way, in any of these conversations, did you indicate to any of these natural persons that you spoke to, as opposed to business entities, the percentage of shares that your client or clients already owned?

A I don't recall specifics like that being mentioned.

Q In other words, did you say "We already have 10%, and we need 20%," or forget the numbers, did you indicate how much additional shares were needed beyond what your clients had to call such a special meeting?

A I don't recall.

Q Do you recall whether or not you told any of these individuals as opposed to business entities or officers or representatives, whether or not your client was then buying additional shares or was interested in buying additional shares?

A No.

* * *

Did you call Helen Levine of Paterson, New Jersey?

A No.

Q You did ascertain, however, from the general list, that one, Norman, owned 800 shares, and one Debby owned 500 shares, and presumably they were related to Helen Levine, correct?

A Yes.

Q But you did not call the Levine family, right?

A Right.

Q What about the Litinskys, Francis and Rose, apparently located in Chestnut Hill, Nevada, and were the owners of 2400 shares.

A I spoke to them

Q Now, you have made brackets around the name, and you have also made an arrow, and sort of a star. What does that all mean?

A I don't -- I don't think it has any special meaning.

Q You have written something to the right of this, and sort of struck it out. Can you read what you struck out?

A I think it may have had something to do with the address.

Q It is not important. Let us not dwell on it. You are sure you called these people, correct?

A Yes.

Q Can you read your note on that telephone call?

A I have a note. He may give proxies.

Q "Widow did not vote"?

A "Widow did not vote, mad at King."

Q Who is King, do you know?

A I believe King was the solicitor for management.

Q Did you try to buy the shares of the Litinskys?

A I believe I did.

Q And they were not interested in selling, is that right?

A That's right.

Q And you also sought to ascertain their attitude towards management, as you put it?

A I believe there was a discussion on management, possibly instigated by Mrs. Litinsky.

Q Do you recall who instigated it, as you put it?

A I think she instigated it.

Q Did you tell her who you represented?

A I --

Q By that, did you tell her that you represented a large shareholder of NJB who was dissatisfied with management?

A Yes.

Q You told her about the possibility of their being a special meeting of 20% of the shareholders who were so inclined, correct?

A I believe we discussed that.

Q And did you ascertain whether or not she would be in favor, correct?

A Yes.

Q Next. Allan A. Maki. Are you aware of whether or not Allan A. Maki has given an affidavit in this case?

A Yes.

Q Have you read the Maki affidavit?

A I have not read the affidavit.

Q Was the substance of the Maki affidavit given to you by someone?

A Yes.

* * *

Excerpts from Deposition of William Schwartz

Q What is your understanding of the substance of these affidavits, if you have any understanding?

A I understand that they stated that I telephoned them, and asked them whether they would support a call for a special meeting of shareholders.

Q Do you have any understanding one way or the other as to whether these affidavits, be they the affidavits of an attorney who spoke to these people, or the affidavit of the recipient of the record, are helpful to the position of Cantor, Fitzgerald's lawsuit?

* * *

Q Answer the question.

A My feeling is that they were not helpful.

* * *

Q You called Mr. Maki, sir?

A Yes.

Q With respect to Mr. Make, you have written down, in addition to the 1800 shares, an additional 1100 shares next to his name, correct?

A Yes.

Q When did you call Mr. Maki, do you know?

A I don't recall the precise date.

Q You apparently tried to reach Mr. Maki at one number and thereafter you learned of another number, isn't that correct?

A Yes.

Q Apparently you left a message with someone or someone told you that he would be available after 6:00 p.m. at the second number, is that correct?

A That is correct.

Q Ultimately, did you talk to Mr. Maki thereafter in the evening?

A Not necessarily.

Q You spoke to him?

A Yes.

Q You tried to buy his shares?

A I believe I did.

Q Do you have a specific recollection of men-

tioning to him the possibility of the purchase by your client of his shares?

A I don't have a specific recollection, no.

Q Is it possible that you did not mention to Mr. Maki that you would be interested in acquiring on your client's behalf his NJB shares?

A Yes.

Q Now, you identified yourself and your business affiliation, is that correct?

A That is right.

Q Did you tell Mr. Maki that you represented a "proxy group"?

A No.

Q Did you tell Mr. Maki that you represented the single largest shareholder of NJB?

A I believe I did, yes.

Q Did you mention the number of shares which your client then owned?

A I don't recall.

Q You do not recall mentioning it or you do not recall whether or not you mentioned the number of shares which your client then owned?

A I do not recall whether I mentioned the exact number of shares.

Q Is it possible that you may have told Mr. Maki that the client you represented had over 100,000 shares of NJB?

A It is possible.

Q By the way, did you indicate to Mr. Maki whether you had one client or a group of clients?

A I believe we were talking about a client.

Q Did you tell Mr. Maki any reason why you were contacting him?

A I am sure I did.

Q Did you say to him, in words or substance something similar to the following: that he had a substantial block of NJB stock and that you were contacting people similarly situated to him?

A No.

Q It is a fact, is it not, that all the telephone calls you made were to persons who owned 1,000 shares or more?

A Correct.

Q Would you agree with the statement that you were contacting people with substantial blocks of shares?

A I did not necessarily tell him that I was calling others.

Q Was that a fact?

MR. KILL: Is what a fact?

Q That a list was made of persons or of businesses owning in excess of 1,000 shares and that you regarded the ownership of 1,000 shares to be a block, is that correct?

A Correct.

Q Did you tell Mr. Maki, in words and substance, that your client was dissatisfied with ıe NJB management?

A Yes.

Q Did you advise him of the possibility of a special shareholders meeting being called?

A Yes.

Q Did you tell him the purpose of this special shareholders meeting?

A I am not sure.

Q Did you tell him whether or not the purpose of the shareholders meeting, if called, would to be elect new trustees?

A I don't believe I used the word trustees; I might have said new Board.

* * *

Q In all the calls you made to individuals, which calls were made in response to Mr. Miller's request to ascertain the status of people? When you mentioned the possibility of such a shareholders meeting, did you inform the caller as to the purpose of such a special meeting if such a meeting should, in fact, occur?

A I may have.

Q What is your best recollection; that you did or did not?

A If the conversation got around to it, we may have -- I may have indicated that the purpose of the special meeting might be to change the Board.

Q I take it that you did not tell these people that there was any other purpose to a special shareholders meeting other than to change the Board; in other words,

that you were seeking a special meeting to sell of assets or anything like that?

A No.

Q What did Mr. Maki tell you about his attitude with respect to a special meeting or a possible special meeting?

A I don't recall his precise words, but I got the feeling from his conversation that he was in favor of management and opposed to a call for a special meeting.

Q You wrote down on your memo here, on this list, Exhibit 31 "will not join in".

A Right.

Q You put the XX on that?

A This may say "will not join us".

Q And you wrote the double X, indicating the man was unfavorable?

A Unfavorable, yes.

Q Are you sure now that you identified your business affiliation?

A Yes.

Q Did you call Market Main & Co.?

A Yes, I called the Second National Bank of Warren, of which Market Main is probably the nominee.

Q And you spoke to a Mr. Fenwick, is that

correct?

A I don't believe I reached Mr. Fenwick. He was out.

Q Do you know who you spoke to?

A I don't recall who I spoke to.

Q What was the upshot of your conversation or conversations with whomever you spoke to on behalf of the Second National Bank at Warren?

A To the best of my recollection, Mr. Fenwick was out and someone told me I should call Mr. Fenwick at some future time because he was the only one that could handle it.

Q You made a notation "do not call --" "foundation --" and then something.

A "Do not call -- foundation -- Larry Orbe".

Q What foundation are you talking about?

A I don't know what the foundation is. I believe when we went through the list, Mr. Orbe told me that I need not call this number because it represented some foundation.

Q You mean Market Main & Co.?

A No.

Q Subsequent to trying, you found out that you should not call him, according to Mr. Orbe?

A Right.

Q And you desisted from further contact with this particular shareholder, or its representatives?

A Correct.

Q And you never reached Mr. Fenwick?

A No, I did not.

Q Whoever you reached, did you tell them or him the purpose of your calling?

A I don't believe so.

Q You never got past the preliminaries, correct?

A Correct.

Q Now, Rives Mathews, Southern Arizona Bank; did you call that shareholders?

A No, I did not.

Q Where did you get this information about Southern Arizona Bank, attention J.C. Bernot -- I guess it is?

A I probably got it out of one of our reference books.

Q Now, you have the Means, Helen Gower Means and K. Glenn Means, who apparently owned 2800 shares between them, and you have a double X there. Did you call them?

A No.

Q Are these one of the people that you were told would be unfavorable, by Mr. Orbe?

A I believe so. The comment in the circle says "management".

Q And Mr. Orbe told you that?

A Correct.

Q Northwestern Construction Company, Metuchen, New Jersey. Did you call them?

A Yes.

Q What does this mean: "no name -- WC 6/17, not known" and this "6/14" is crossed out?

A I believe the secretary refused to give me the name of the principals but did tell me, if I left my phone number, they would call me.

Q Did they call you?

A Yes.

Q What did they tell you?

A They called me on June 17.

Q Who called you?

A I don't recall the gentleman's name.

Q Do you remember what was said during this telephone conversation?

A Well, I probably told them on June 14 -- I called him and told him that I was a buyer of NJB stock and he indicated to me that he could not sell now -- not now.

Q He said "probably"? Do you have any specific

recollection of all or any part of the conversation?

A Not specifically.

Q What is your testimony based on?

A My testimony is based on my notes and my best recollection of the conversation.

Q Do you have any recollection as to whether or not you got beyond discussing with these people whether they were interested in selling some or all of these shares to you?

A From my comment "not now", I would believe it means that he was not ready to sell at this time.

Q Did you discuss his attitude toward management, for example, with this gentleman?

A I don't have any recollection on it. Sometimes when they are busy they end a conversation before you get around to too much so I may not have discussed anything further with him.

Q As far as you recall, you never got beyond the discussion of the sale of the stock, correct?

A Correct.

Q Well, one, Lawrence J. Obrien, Passaic, New Jersey, and you have a double X next to his name.

Is he one of the people Mr. Orbe said was friendly to management?

A Yes.

Q You did not call him, did you?

A I did not.

Q Under that name appears some handwriting. Could you decipher that, please.

A I believe it refers to a New Haven National Bank, 500 -- 500, total of 1,000 shares. I got it off the stockholder list. I did not call them.

Q Harold Porter, Jr., Clifton, New Jersey, 3,000 shares of stock, according to Exhibit 31. Did you call that gentleman?

A I did not.

Q What does that X mean?

A It probably means he was connected with management.

Q In some places you have used X and in some places you have used double X, is that right?

A That is right.

Q You also similarly marked Prime Equities Inc. Attention Peter Simon, as being part of management or favorable to management, is that correct?

A Correct.

Q You did not bother calling them, I take it?

A No, I did not.

Q Hyman Shapiro and Mildred Shapiro, who owned

3200 and 1200 shares respectively; did you try to call them?

A Yes.

Q Did you reach them?

A I believe I reached Mr. Hyman Shapiro on June 14.

Q What discussion took place between you and Mr. Shapiro?

A I told him I was a buyer of 5,000 shares of NJB prime stock.

Q What did he say to you?

A He told me he was a buyer also.

Q Is that what it means by "trades it"?

A He was a buyer of 5,000. He told me he trades it in and out.

Q Did you have further discussion with Mr. Shapiro about NJB stock or themanagement of NJB?

A No.

Q Did you indicate that you represented a large stockholder who was dissatisifed with the management of NJB?

A I don't believe so.

Q Did you mention to Mr. Shapiro the possibility of their being a special shareholders annual meeting of --

A I don't believe I did.

Q You did not attempt to ascertain whether or not Mr. Shapiro would or would not be in favor of such a special meeting, I take it?

A No.

Q Mildred K. Simon, Clifton, New Jersey; you have marked as somebody unfavorable to management, correct?

A Yes.

Q You did not call her?

A No.

Q With respect to one, Phillip E. Solomon, 350 Fifth Avenue, New York, New York; did you call him?

A Yes.

Q When did you call him, sir?

A On June 14.

Q What was the discussion?

A I told him I was a buyer or NJB stock. He told me he was not a seller at these low prices.

Q Was there any discussion as to any subject other than whether or not he was interested in selling his NJB shares?

A I don't believe so.

Q To the best of your recollection, you did not discuss his attitude toward management with him?

A That is correct.

Q With respect to Jack Srebrenik, and I cannot pronounce it. Did you call that gentleman?

A I called the number.

Q Did you talk to him?

A No.

Q Did you talk to anyone at that number?

A No.

Q What does the notation "6/18 busy" mean?

A I think my notation means, I got a busy signal.

Q Do you say it means that as opposed to the possibility that this gentleman was busy and could not talk to you?

A To the best of my recollection, I did not get through to Jack Srebrenik.

Q Are you stating that is what the notation "busy" means, that the gentleman was busy on the telephone as opposed to the fact or the possibility that he was busy with other matters and wouldn't talk to you?

A Yes.

Q Did you call Mr. E. Milton Staub, Westfield, New Jersey?

A Yes.

Q Did you attempt to buy Mr. Staub's shares in

NJB?

A I am not sure.

Q When did this telephone conversation take place with Mr. Staub?

A June 18.

Q You called him first, apparently, and he called you back?

A That is possible.

Q You have a "WC" will call, which would imply that you didn't reach him on the first try and left a message; is that what that means?

Is that correct?

A Correct.

Q Either he called you back or you called him again?

A That is correct.

Q When you ultimately reached him, did you seek to ascertain his attitude toward the existing management of NJB?

A Yes, I did.

Q Did you tell him that you represented a large shareholder who was dissatisfied with the present management?

A Yes.

Q Did you mention the size of the shareholdings of your client?

A I am not sure.

Q Did you mention the possibility of there being a special meeting of shareholders of NJB?

A I don't believe that is what I said.

Q What did you say? You tell me.

A I might have said to him that it is possible that if 20% of the shares so desire, they might call a special meeting.

Q What, if anything, did Mr. Staub say to you? Was he favorably inclined toward that possibility of opposed to it?

A He was favorably inclined toward a special meeting.

Q Did you call Leon S. Stone and Ruth H. Stone, as joint tenants, Hamden, Connecticut?

A Yes.

Q When was that, sir?

A June 14.

Q Did you try to obtain or purchase on behalf of your client their 2,050 shares which they apparently held jointly?

A Yes.

Q What was the upshot of that attempt?

A They would not sell their stock.

Q And you made a notation "no" no?

A Right.

Q Did you attempt to ascertain their attitude toward the management of NJB prime?

A I don't believe so.

Q Did you discuss the possibility with them whether there might be or could be a special meeting of shareholders if 20% of the shareholders were so inclined?

A I don't believe we discussed it.

Q As far as you recollect, you did not get into anything beyond ascertaining whether or not they would sell their shares, is that correct?

A Correct.

Q David W. Traub, Londonville, New York; you called him, sir?

A Yes.

Q You called him on June 18?

A Correct.

Q And he owned 1976 shares, correct?

A Right.

Q Did you try to ascertain whether some or all of those shares could be purchased for your client?

A I don't think so.

Q Did you seek to ascertain Mr. Traub's attitude toward the existing management of NJB?

A Yes.

Q Did you tell him you represented a large shareholder in NJB?

A Yes.

Q Did you tell him the approximate number of shares that your client had?

A I am not sure.

Q Did you mention to him the possibility of whether there might be or could be a special meeting of shareholders is 20% of the shareholders were so inclined?

A Yes.

Q Did you tell him your client was dissatisfied with the management of NJB's existing management?

A Yes.

Q What was his response?

A He responded to me that he would be in favor of a change in management.

Q Can you read into the record what he wrote there "friendly --" what does it say? I can't make it out.

A "Friendly - what does it involve".

Q Apparently the double checkmark is an indica-

tion that these people are favorable to you, is that right?

A I don't know whether that is necessarily so. I put a double check next to Prime Equities and it had the opposite meaning.

Q Let's not waste time, if we don't know what the meaning is.

You attempted to reach Gladys H. Vonhacht, Milford, Connecticut, is that right?

A Yes.

Q You tried to reach this lady on two occasions and her telephone was busy, is that right?

A That is right.

Q Now, Dorothea B. White and, I guess, her husband, George C. White of Redbank, New Jersey --

A Right.

Q Did you try to reach these folks?

A Yes.

Q What happened?

A I probably reached Dorothea White and I have a notation, "call evening after 5:00".

Q Did you have any discussion with either Mr. or Mrs. White about NJB?

A I don't recall.

* * *

Q Do you recall whether or not you told Mr. White, in words or in substance, that you were seeking to round up NJB shareholders for purposes of calling a special shareholders meeting?

A No.

Q Do you recall whether or not you asked Mr. White to join in this special shareholders meeting?

A No.

Q Do you recall whether or not you advised Mr. White, in words or in substance, that you represented a client who was a large shareholder of NJB prime?

A That is possible.

Q Did you advise Mr. White that your client was dissatisfied with the then existing management of NJB?

A I might have.

Q Did you advise Mr. White as to the fact that if 20% of the shareholders of NJB concurred, a special meeting could be called?

A I might have.

Q Did you advise Mr. White as to the purpose of any such special meeting that might be called?

A No.

Q Did you advise him that at any such meeting, that is special meeting that might be called, a new Board

or new management could be installed?

A I might have said that.

Q Did you advise Mr. White as to whether or not you had telephone anyone else who had any shares or interest in NJB?

A No.

Q You are sure of that?

A I am sure of it, yes.

Q Do you know whether or not Mr. White said anything to you?

A I have no recollection.

Q You have no recollection one way or the other?

A No.

Q Do you know whether or not Mr. White asked you for information as to whom you represented?

A He did not.

Q You are sure he did not?

A I am sure.

Q Do you know whether or not Mr. White requested any information from you as to the details of what your clients had in mind with respect to NJB?

A No.

Q You do not remember one way or the other?

MR. KILL: He said, no.

A I don't believe so.

Q You do not believe he said that?

A I do not believe he asked for details.

Q Did he request any information from you whatsoever?

A By request information, are you talking about by mail?

Q No.

A Anybody who talks --

Q Then and there, did he request or ask you questions about the details involved in your statements to him, like, if you said you represented a person who was dissatisfied with the management of NJB, did he ask you how he was dissatisfied, in what respects he was dissatisfied, why were you dissatisfied; those would be details to me.

A I don't recall.

* * *

Q I take it you do not recall what Mr. White's attitude was with respect to the management of NJB, is that right, or maybe you do recall what Mr. White's attitude was?

A I don't recall what his attitude was.

Q In any event, you made no notation here on Exhibit 31 in that respect, is that correct?

A Right.

Q Did you contact one, Stephen A. White, in Mebane, North Carolina?

A Yes.

Q When did you call him?

A On June 14.

Q Can you just decipher these notes, please.

A The first line is a telephone number.

Q That I understand.

A "June 14" his answer to me was "maybe - will call if interested". I made a notation "6 net" which was my bid for his stock. I probably left my phone number and on June 18 I may have called him again -- on June 18, and I did not get through to him.

Q Now, you did not buy Mr. White's stock, I take it?

A No, I did not.

Q Do you recall whether or not you had any discussions with Mr. White beyond ascertaining whether he would be interested in selling his shares to your client?

A No.

Q You do not recall any discussions with him about his attitude toward the management of NJB?

A No.

Q Is it your best testimony that no such discussions took place?

A That is my best testimony, yes.

Q Now, one Harry G. Wiberg, Jr., whose name you changed from Wilbers to Wiberg. Did you call that gentleman?

A Yes.

Q And you called him on June 17 at his office?

A I believe my first call was to his home, and I was referred by someone at his residence to a different number, indicating a broker -- most likely a broker.

Q Ultimately you reached Mr. Wiberg, correct?

A Correct.

Q Did you try to buy Mr. Wiberg's shares?

A I believe I indicated I was a buyer.

Q Did you have any discussion with Mr. Wiberg beyond your indication that you were a buyer?

A Yes.

Q What did you say to him and what did he say to you?

A Well, to the best of my recollection, I told him that we represented the largest shareholder in NJB prime and that I was dissatisfied with the management and I tried to determine from Mr. Wiberg what his attitude toward the management of NJB prime was.

Q What did he tell you?

A I have a comment here, "likes management at annual meeting". It appeared th[illegible]e was in favor of the current management.

Q You put a double X there, correct?

A Yes.

Q Did you, in words or substance, tell Mr. Wiberg that you represented a group of NJB shareholders who were soliciting support for --

A No.

Q Did you tell Mr. Wiberg, in words or substance that the people you represented wanted to do something different than the then existing management?

A I believe so.

Q Did you tell Mr. Wiberg that the people you represented wanted to change things at NJB, including

the management of NJB?

A Yes.

Q Did you mention to Mr. Wiberg the possibility of this special meeting being called if 20% of the shareholders of NJB agreed to such a meeting?

A I don't recall.

Q Did you mention to him what the purpose of calling a special meeting would be?

A Yes.

Q What did you tell him the purpose of calling such a meeting would be?

A Did I say that I discussed with him a special meeting?

Could you read my answer back.

Q think you did.

MR. KILL: I think it would be best if the reporter read back the last two questions. There may be an inconsistency.

MR. KANTOR: If you wish, he will read it back.

(Record read.)

MR. KILL: Let him clarify the record. There is an inconsistency, to some extent.

A I don't recall specifically whether I discussed

with Mr. Wiberg the possibility of a special meeting being called.

Q Would it be fair to say that if you discussed such a possibility, you are not in a position to testify one way or the other that you would have told him the purpose of such a meeting?

MR. KILL: Do you understand the question?

A In other words, if I discussed it, this possible special meeting, would I have discussed the purpose of it?

Q You are right on the target.

MR. KILL: That is a speculative question.

A I probably would have.

Q You are certain that you did discuss his attitude toward management and that he indicated to you, in response to whatever you told him, that he was favorably inclined to the existing management, is that correct?

A Correct.

Q Now, these other notations here with respect to Abe Strickler.

Did you call a person by the name of Abe Strickler?

A No.

Q Can you decipher what it says here about Abe Strickler.

A "2655" would be the serial number of the Strickler name in the master list, and it looked like the people at that address, with the name of Strickler, owned a total of 1,000 shares in four pieces.

Q What is this notation to the right? It says "No. 2960" and then some handwriting that I can't make out?

A It looks to me like it was another shareholder with over 1,000 shares.

Q What is the notation next to Mr. Edward Waitzer, Toronto, Canada? What is that notation? Is that "floor"? Is it "loan"?

A There probably was another name with that.

Q Would you say that was "Sloan" maybe?

A There was another Waitzer at that address with 500 shares -- some number.

Q You did not call Mr. Waitzer?

A No.

Q Subsequent to June 18, did you make any telephone calls to any shareholders of NJB prime?

A No.

Q To your knowledge, did anyone else in the

employ of Cantor, Fitzgerald or principals of Cantor, Fitzgerald, make any calls to shareholders of NJB prime?

A No.

Q Were you instructed by anyone that you should not call any shareholders of NJB prime after June 18?

A Yes.

Q Who so instructed you?

A I believe, Mr. Miller.

Q When did Mr. Miller so instruct you?

A At the end of the day on June 18, it was indicated to me that no further calls are to be made.

Q Mr. Miller indicated this to you, is that correct?

A Correct.

* * *

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BY MR. KANTOR:

Q Mr. Schwartz, did you make any filings with the SEC pursuant to Rule 14A-11C to solicit proxies?

MR. KILL: Did he personally?

MR. KANTOR: Yes.

A No.

A 1156

Excerpts from Deposition of William Schwartz

Q To your knowledge, did Cantor, Fitzgerald make any filings with the Securities and Exchange Commission with respect to proxy solicitation in the matter of NJB?

A I have no knowledge of it.

Q To your knowledge, did anyone either on behalf of Cantor, Fitzgerald or Mr. Davis or D-Z or on behalf of Security Management make any filings in either Schedule 14B with the SEC with respect to proxy solicitations with respect to NJB?

A No.

Q At the time you made these telephone calls in this period, June 13 through June 18, were you familiar with Rule 14A-11 of the proxy rules of the Securities and Exchange Commission?

A No.

Q In any of your discussions, did you ever mention the names or the identify of any person or persons which your client would desire to be on the Board of NJB or be part of the managment of NJB?

A No.

Q You never mentioned any names?

A No.

Q Let me show you what has been marked as

Exhibit 11 for identification, which I can represent to you came from Mr. Kill, who said that this was from the files of Cantor, Fitzgerald.

Have you ever seen Exhibit 11 for identification or any other copy thereof?

A Yes.

Q Is this the shareholders list that you referred to, the big list, as you referred to it?

A Yes.

Q Do you know who made up the summary lists, Exhibit 31?

A No.

Q Do you know whether the list comprising Exhibit 31 was made up in the office of Cantor, Fitzgerald?

A No.

Q When was the first time you saw Exhibit 11 for identification or any other copy thereof and by that I mean the big list?

A On June 14 or the 17th.

Q From whom did you get the list? From Mr. Miller?

A No. Mr. Orbe's secretary showed me the list.

Q Do you know how or from whom or the circumstances under which Cantor, Fitzgerald obtained Exhibit

11 or any of the copies of Exhibit 11?

A No, I do not.

Q Now, there are some clips here in this thing, Exhibit 11, with reference to some markings and other things, and I believe this will be very brief, but do you know who made this checkmark on Page 8 of the big list next to the name Bacall, care of the Bank of California?

Do you know who made that checkmark?

A No, I do not.

Q Do you know if you made that checkmark?

A No, I do not.

MR. KANTOR: Let me now mark as Exhibit 11-A for identification, another copy of Exhibit 11, which was furnished to us by Mr. Kill, by letter of last Thursday evening, and I would like to have this marked Exhibit 11-A, if you will.

MR. KILL: The record ought to show that what I furnished was the original stockholders list, and this is a copy of this.

MR. KANTOR: Mr. Kill is to the mark here. He furnished an original Exhibit and a photostat was made of Exhibit 11 which was originally given to us and photostated. In other words, Exhibit 11 was marked in the form given to us.

Let us mark this photostat of the stock-holders list as Exhibit 11-A.

(Above-described document herein marked Defendant Trustee's Exhibit 11-A for identification, this date.)

Q Let me direct your attention to Exhibit 11-A, and to these various clips on the pages of Exhibit 11-A. It would appear that some body made some circles and X's next to various names.

Did you make those markings?

A No, I did not.

Q Do you know when they were made?

A No.

Q Do you know who made them?

A No.

Q Now, with respect to Page 8 of Exhibit 11-A, that has the same notation that Exhibit 11 did on it, next to the Bank of California, on Page 8.

Page 10 somebody made a checkmark next to the name of Charles Schwartz of Newton Center, Massachusetts, an owner of 1,000 shares on this list. Did you make that checkmark?

A No.

Q Do you recall if you called Mr. Schwartz of

Newton Center?

A I did not call that name.

Q Do you know who made that check mark next to Mr. Schwartz' name?

A No, I do not.

Q Do you know of any reason why that checkmark is there?

A No.

Q Do you know if anyone else called Mr. Schwartz of Newton Center?

A No.

Q You do not know one way or the other?

A No.

Q With respect to Mildred Simon and the check-mark next to her name; do you recall calling her? She has a checkmark next to that.

A What is the question.

Q Did you make that checkmark next to her name?

A No.

Q Do you know who made it?

A No.

Q Do you know if anyone called Mildred Simon, that is anyone else?

A I don't know.

Q Now, with respect to Leon S. Stone and Ruth H. Stone of Hamden, Connecticut and the checkmark next to their names, did you make that checkmark?

A No.

Q Do you know who made the checkmark?

A No.

Q You have already testified as to your contact with the Stones.

Do you know if anyone else called or contacted the Stones?

A I do not.

Q Barbara E. Waters of Fork River, New Jersey, the owner of 1480 shares, and there is a checkmark next to her name, did you make that checkmark?

A No.

Q Do you know who did?

A No.

Q Do you know if she was called or contacted by anybody?

A No.

Q You did not call her?

A No.

Q With respect to Jack Weisbord and Ruth Weisbord of Pompano Beach, Florida. Do you recall calling

them?

A No.

Q Did you make the checkmark next to their names?

A No.

Q Do you know if anyone else called him?

A No.

Q Do you know of any reason why there are any checkmarks next to any of these names on Exhibit 11-A?

A I do not.

Q Did you see Exhibit 11-A with the original Exhibit of Exhibit 11 or another copy of the list that you saw and did it have checkmarks on it or did it not have checkmarks on it?

MR. KILL: If you recall.

A I don't recall.

* * *

EXCERPTS FROM DEPOSITION OF W[illia]M P. MILLER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

D-Z INVESTMENT COMPANY,

Plaintiff,

vs.

ROBERT E. HOLLOWAY, MELVIN S. TAUB, MAURICE J. BRICK, PETER E. SIMON, NORMAN BRASSLER, CHARLES GILLER, HERBERT E. HARPER, DR. GORDON McKINLEY, JAMES R. MOSELEY, III, JACK G. TAYLOR, DALLAS G. TOWNSEND, JR., and NJB PRIME INVESTORS,

Defendants,

and

74 Civ. 2379
(I.B.W.)

SECURITY MANAGEMENT CO., INC., CANTOR, FITZGERALD & CO., INC., BRUCE R. DAVIS, JEROME ZIMMERMAN, RALPH M. BECKER, SAUL BECKER, BERNARD KROLL, MAX SOPHIER, HAROLD LEVOW, HAROLD B. LEVIN, HARVEY JACOBSON, and SEYMOUR WEINBERG,

Additional Defendants to Counterclaims

----------x

DEPOSITION of WILLIAM P. MILLER, taken pursuant to Notice, held at the offices of Wachtell, Lipton, Rosen & Katz, Esqs., 299 Park Avenue, New York, New York, on the 24th day of

BENJAMIN REPORTING SERVICE
5 Beekman Street
New York, New York 10038

374-1138

July, 1974, at 4:00 p.m., before Jerry Pellis, a Notary Public of the State of New York.

oOo

APPEARANCES:

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BY: MICHAEL W. MITCHELL, ESQ.,
of Counsel

oOo

WILLIAM P. MILLER, called as a witness, having first been duly sworn by the Notary Public, and stating his address as 445 East 78th Street, New York, New York, was examined and testified as follows:

EXAMINATION BY

MR. KANTOR:

Q Mr. Miller, how old are you?

A Thirty-six.

Q Are you an officer of Cantor, Fitzgerald & Company, Inc.?

A Yes.

Q What is your title?

A Senior vice-president.

Q Can you just briefly describe for me your duties?

A I generally have administrative responsibilities in the New York office and I supervise and actively participate in the corporate finance department.

Q Does Mr. Orbe report to you, sir?

A Yes.

Q Does Mr. William Schwartz report to you?

A No.

Q Who if anyone would Mr. Schwartz report to?

A Probably the president of the firm.

Q How long have you been employed by Cantor, Fitzgerald?

A Four and a half years.

Q How long have you held your present officership?

A About a year.

Q Prior to becoming senior vice-president, did you hold any office or title with Cantor, Fitzgerald?

A Yes. I was a vice-president.

Q When did you accede to that title or gain that title?

A Three months after arriving at the firm.

Q Prior to being employed by Cantor, Fitzgerald, were you employed by anyone else in the securities industry?

A No.

Q Are you a college graduate?

A Yes.

Q When did you graduate college?

A June, 1959.

Q What college?

A Long Island University.

Q What is your degree?

A I have a B.S., in business.

Q Could you just briefly describe your employment history from college up to when you became employed by Cantor, Fitzgerald?

A I left Cantor, Fitzgerald and spent three and a half years in public accounting.

Q You left Cantor, Fitzgerald?

A I left college. Excuse me. I left college and spent three and a half years in public accounting, while I attended law school in the evening. I then joined a tax practice, and for perhaps six years or so was engaged in the tax practice. It was from there that I joined Cantor, Fitzgerald.

Q Are you a certified public accountant?

A Yes, sir.

Q When did you gain that certification?

A 1964.

Q You are an attorney at law, are you?

A Yes.

Q Are you authorized to practice in the State of New York?

A Yes, sir.

Q Let me show you Exhibit 11 and Exhibit 11-A, which are for all intents and purposes, as far as my

questioning of you will be concerned, the same. When did Cantor, Fitzgerald first obtain a copy of the NJB shareholders' list?

A Sometime in early May.

Q From whom was such a list obtained?

A A messenger from our office went down to Chemical Bank and picked up the list pursuant to instructions that we received.

Q From whom did you receive these instructions?

A Our counsel, Rubin, Wachtel.

Q At that time did you have any understanding as to whether or not this list was being obtained by Cantor, Fitzgerald pursuant to the order of any court?

A Yes, I did.

Q What was your understanding?

A Pursuant to an action of D-Z.

Q Where; in the State of Massachusetts?

A Yes.

Q Your messenger picked up, I take it, the original list which the Chemical Bank was furnished to D-Z. Is that correct?

A That is correct.

Q Was it your understanding that your firm's messenger was picking this up on behalf of D-Z?

A Yes.

Q Subsequent to the list coming into the possession of your messenger, what happened to that list?

A It was delivered to my office late Friday and I first saw it on Monday morning, as I recall.

Q Has your firm made any copies of that list for any other person, firm or corporation, other than whatever may have been furnished here in connection with this case by Mr. Kill's firm to our firm?

A Let me say that on Monday morning I took the list, which was a rather large, cumbersome size, and gave my secretary instructions to have several copies made on the Xerox reduction equipment.

Q Do you recall approximately how many copies were made?

A Three.

Q What happened to those copies, as far as you know?

A I recall giving one to Bruce Davis; I recall leaving one at the offices of Rubin, Wachtel, and I think I kept the third one for my own purposes.

Q Other than these three copies that you have just referred to, are you aware as to whether or not your firm made any additional copies of the NJB shareholders'

list subsequent to obtaining them?

A No.

Q Those are the only copies of which you are aware?

A Those are the only ones I am aware of, yes.

MR. KILL: Other than the copies made in connection with this litigation.

THE WITNESS: Yes.

Q What did you do with your list, sir?

A I instructed my secretary to have prepared summary lists.

Q What instructions did you give her; to make two lists, one of 10,000 or more shares, and another 1,000 to 9,999?

A It says 1,000 to 10,000, I think.

Q 1 to 10,000 and over 10,000.

A Yes.

Q Did anyone instruct you tc have such summary list prepared?

A No.

Q It was your own idea?

A Yes.

Q For what purpose did you ask your secretary to make these summary lists?

A Because I wanted it.

Q But did you have anything in mind other than you wanted a summary list? Did you have anything in mind?

A The list that was originally supplied was too large and cumbersome. I wanted to see where the major stock-holdings were.

Q Did you have any reason at that time, other than informational, to want to know who owned 1 to 10,000 shares of NJB and who owned more than 10,000 shares of NJB?

A No.

Q Did you ever discuss with Mr. Davis or any other officer, employee or representative of D-Z the making up of summary lists?

A No.

Q Did you discuss with anyone from Rubin, Wachtel the making up of summary lists?

A No.

Q Subject to the summary lists being prepared, what if anything did you do with these lists? By that, I mean specifically did you furnish copies to any other person outside of the Cantor, Fitzgerald office?

A No, we did not.

Q Have you ever up to and including today ever

furnished the summary list -- and by that I mean Exhibit 31, without the handwriting -- have you ever furnished the typed portion of Exhibit 31 to anyone in the world, from the time they were made up up to the present time, other than what may have been produced in this lawsuit and given to Mr. Kill, which in turn I received?

A Anyone in the world? Yes.

Q Who did you give a copy of the summary list to? I am talking only outside the employ of Cantor, Fitzgerald at the moment.

A Rubin, Wachtel got a summary list simultaneously with the stockholder list, and Bruce Davis.

Q He received a copy, also?

A Yes.

Q Did you ever make copies, by the way, of the large shareholder list, namely Exhibit 11, or the summary shown on the list, Exhibit 31, for Georgeson Company?

A No.

Q Do you know who Georgeson Company is?

A I think it's a proxy solicitation firm.

Q But to your knowledge you never gave them or Cantor, Fitzgerald never gave them an actual list or a summary list?

A That is correct.

Q Do you know what if anything Mr. Davis did with either the large shareholder list, Exhibit 11, or the summary lists, Exhibit 31, after he received same from you?

A No, I do not.

Q Do you know whether or not he has ever contacted anyone personally or through any employee, officer, director or agent of D-Z Investment Company, whose name appears on these lists, Exhibit 11 and Exhibit 31?

A No.

Q You don't know one way or the other?

A I don't know one way or the other.

Q No information at all that you can give us?

A No. I have no knowledge.

Q Let's direct our attention to Cantor, Fitzgerald. To whom, if anyone, have you ever given copies of Exhibit 31 -- and when I say Exhibit 31 I am talking of this (indicating) -- or the complete list, which are Exhibits 11 and 31, from the time you got them until the time they were made up, up to the present time?

A Bill Schwartz, Larry Orbe, and Bernard Cantor.

Q Did they each get one copy of the actual list and the summary list, or did you circulate one copy among

them?

A They would have each gotten one copy of the summary list.

MR. KANTOR: I ask for the production of the summary list of Mr. Orbe and Mr. Bernard Cantor.

Q You also kept a copy?

A I got Mr. Cantor's back. Mr. Cantor maintains no files as a general practice and returns all memos and things transmitted to him back to the people that send it to him.

* * *

BY MR. KANTOR:

Q For what purpose did you make these copies of the summary lists for Messrs. Cantor, Orbe or Schwartz?

A To see if they recognized or had personal knowledge of people, these shareholders.

Q You say Mr. Cantor returned his list to you. Did he know any of these people on this list?

A Yes.

Q Do you recall who he knew?

A People at the Kansas City Bank.

Q Did anyone thereafter contact these people, other than Mr. Schwartz?

A Yes.

Q Who?

A Mr. Cantor.

Q When did he contact these people at the Kansas City Bank?

A Sometime later, I suspect.

Q By that you mean sometime in May?

A Yes.

Q Did he contact the Kansas City Bank people?

A To find out if they were holding the stock.

Q Do you have knowledge what they said to the Kansas City Bank people and what they said to him?

A Yes. He recalled to me that the trust officer had done a detailed study of REIT's and had thought that NJB was a wise investment, and it was the sorriest decision he had made.

Q Do you know whether or not Mr. Cantor sought to obtain some or all of the stock in NJB then being held by Kansas City Bank? Did he try to buy it is what I am trying to say.

A Excuse me a second.

Could you repeat the question?

(Question read.)

A I am told the stock was offered to him.

Q What did he do?

A He purchased for D-Z certain of their holdings.

Q Do you know how much he purchased and how much they had left after the purchase -- they being Kansas City Bank?

A Do you want to break the question into pieces?

Q How much did he buy?

A He made two purchases on two different days.

Q When was that?

A He made one purchase -- I don't recall the dates,

but it was some few days after. He purchased one block of 15,000 shares and one block of 10,000 shares, for a total of 25,000 shares. According to the records there, they own some 53,000 shares, and still hold the rest.

Q By that you mean Tranco & Company as apparently nominee for Kansas City Bank and Comtru & Company as nominee for Kansas City Bank?

A Yes.

Q Do you know whether Mr. Cantor subsequent to these purchases ever contacted the Kansas City Bank to ascertain whether or not they would support an effort by D-Z to oust the existing management of NJB?

A He did not contact them for that purpose.

Q Do you know whether or not anyone else other than Mr. Cantor ever contacted the Kansas City Bank or its nominees to discuss whether or not that institution would support an attempt to call a special meeting of the shareholders of NJB?

A I did not, and to my knowledge no one at Cantor, Fitzgerald ever has.

Q Were there any other persons, firms or corporations whose names were listed on either Exhibit 11 or Exhibit 31 known to Mr. Cantor?

A No.

Q How about Mr. Orbe? Did you ever learn as to whether or not Mr. Orbe knew any of the names on either Exhibit 11 or Exhibit 31?

A Yes, I did.

Q What did you learn, sir?

A He recognized a bunch of names of people that lived in New Jersey, since that's where he had resided, as being people that he had some familiarity with.

Q Can these people be described in any short-hand fashion as the existing management of NJB?

A Additionally people that lived on Clifton Avenue in Clifton, New Jersey, where he resided, who knew people at the bank. Although they may not have been involved with the bank directly, they were old-line people who were in the community a long time and had ties to the bank.

Q Do you know whether Mr. Orbe or anyone else in the employ of Cantor, Fitzgerald ever contacted some, all or any of these people on Exhibit 31 or Exhibit 11 known to Mr. Orbe?

A To my knowledge, no.

Q Have you ever contacted any shareholder of NJB for any purpose from February 28, 1974 up to and including the present time?

A I have not.

Q To your knowledge, has anyone in the employ of Cantor, Fitzgerald contacted any shareholders of NJB at any time from January 1, 1974 up to and including the present time?

A Yes.

Q Can you give me the identify of such person or persons?

A It would be Mr. Cantor, as previously indicated, and Bill Schwartz.

Q Do you know on or about what time Mr. Schwartz was given a list of the shareholders of NJB, either the summary list or the first time he saw the large list?

A Yes.

Q When was that?

A Right after the annual meeting of the trust.

Q Do you recall what the date of that annual meeting was?

A The 13th, 14th, 15th of June.

MR. KANTOR: I think we can agree it was June 13th. Is that correct?

MR. KILL: I don't know about that.

MR. MITCHELL: June 13th.

Q It was your best recollection Mr. Schwartz was given the summary list as well as the complete list on June 13th. Is that correct?

A Yes.

Q At the time you gave Mr. Schwartz the list, what if anything did you say to Mr. Schwartz?

A I want to purchase shares of this company for an account of ours.

Q Did you identify what this account was?

A Yes.

Q What did you tell him? Did you tell him it was Davis and/or D-Z?

A Yes.

Q Was Mr. Schwartz at that time familiar with who Mr. Davis was and who D-Z was?

A Yes.

Q Did you give Mr. Schwartz at that time any parameters as to how much he should purchase, who he should contact, what price should be paid, or any other guidelines?

A I told him we would purchase at around the market, and before he made any purchases, to check with me first.

Q So he could not make any purchases without your approval. Is that correct?

A That is correct.

Q Did you indicate to him at that time any goal as to the total number of shares which your clients D-Z and Davis -- I use them interchangeably -- were seeking at that time through the use of the shareholders' list?

A I don't recall.

Q Did you discuss with Mr. Davis the use of the shareholders' list to obtain block purchases?

A I may have mentioned it to him.

Q May have, or you did?

A I don't know.

Q You really can't rexexber one way or the othey?

A That's correct.

Q Did you give Mr. Schwartz any other instructions, other than what you have just testified to, with respect to the use of these shareholders' lists?

A None that I recall.

Q Did there come a time subsequent to June 13th when you gave Mr. Schwartz additional instructions with respect to Exhibits 11 and 31?

A Yes, I did.

Q When was that?

A Several days later.

Q Do you recall the exact date?

A It was two or three days later. I think there was a weekend involved. When I speak of days, I mean business days.

Q Just in the interest of speeding this up, I will give you a calendar. Mr. Schwartz has testified this morning that on June 18th you and he had a subsequent discussion about the use of these lists. Do you have any reason to dispute that testimony?

A No. That sounds right.

Q How many conversations did you have with Mr. Schwartz on June 18th? Was it one or was it more than one?

A I don't recall.

Q Does it refresh your recollection that in the morning of June 18th, or whatever date it was, you told Mr. Schwartz not to buy any more or seek to buy any more shares of NJB through the use of this list, Exhibit 31, the summary list?

A Yes.

Q That refreshes your recollection?

A Yes, it does.

Q Do you recall telling Mr. Schwartz anything

else on the morning of June 18th?

A No, I do not. I told him we were out of the market.

* * *

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Q Did you have a subsequent conversation with Mr. Schwartz later in the day?

A Yes, I did.

Q What was that conversation?

A I suggested he continue to call some stockholders to find out what their attitude is with respect to their holdings in NJB.

Q Do you recall saying anything further than what you have just testified to? Can you supply the exact words you used or any further details?

A I think the term I might have used might have been I would like to take their temperature to find out if they are happy or unhappy with the position that they are holding.

Q Irrespective of what you might have said, do you recall what you did in fact say? If not, please don't speculate. Did you actually say that? Do you have any recollection of saying that?

A I recall using the words "take temperature."

Q That is your best recollection, that you used that word, among other words?

A Yes.

Q Did you tell Mr. Schwartz at that time anything about the possibility of a call of a special meeting of NJB shareholders and what the requirements were to call such a meeting?

A Yes. I recall bringing Mr. Schwartz up-to-date.

Q What did you say? Give me your exact words. If you can't use the exact words, give me the substance of what you said.

A The substance of what I said was that the trust indenture, as far as I was led to believe, could provide a shareholder who owned 20% or more of the certificates of beneficial interest could call a special meeting, and that is apparently the present thinking of what D-Z would like to do.

Q When you said apparently was the present thinking, that was their thinking on that date, or is it also their thinking today?

MR. KILL: If you can speak for D-Z at the present time.

A I don't know what D-Z's thinking is as of this moment.

Q Your testimony referred to thinking as of that time.

A At that time, yes.

Q Did you mention to Mr. Schwartz the fact that if your client plus additional shareholders whose total holdings would aggregate 20% or more approved, that such a special shareholders' meeting could take place?

A That I believe was in response to a question they asked me. He said does it have to be D-Z only.

Q What did you say?

A I said no. It's any group of shareholders holding 20% or more.

Q Why don't you see if you can recall anything else that was exchanged between you and Mr. Schwartz in this conversation. Do you recall anything else other than what you have told me just now?

A No. It was a very brief 30-second discussion.

Q Did Mr. Schwartz ask you what he could tell the shareholders that he was going to contact?

A I don't recall.

Q Did you tell Mr. Schwartz what he was authorized and empowered to tell the shareholders that he was going to contact?

A No. Mr. Schwartz is a professional and I assume understood what I meant when I said take temperature.

MR. KANTOR: I move to strike the portion of the answer where he goes into accrediting Mr. Schwartz.

Q Please answer my questions directly, if you can.

Did you tell him, yes or no, what he could tell these shareholders?

A I don't recall.

Q You don't recall that you told him anything, or you don't recall whether or not you told him anything?

MR. KILL: Other than what he has testified to.

MR. KANTOR: Yes.

A I don't recall whether I told him anything else.

Q Did you tell him he could contact as many shareholders as he wanted to?

A No, I did not tell him that.

Q Did you tell him that he could only contact a finite number of shareholders?

A No, I did not.

Q Would it be fair to say that you did not tell him anything one way or the other as to how many share-

holders he could contact?

A That is correct.

Q To your knowledge, did Mr. Schwartz thereafter contact a number of NJB shareholders, using Exhibit 31?

MR. KILL: Using or listed on Exhibit 31.

MR. KANTOR: Yes.

A Yes.

Q How did you learn that, sir?

A He told me of his results.

Q Did he tell you who he contacted by reference to the list, or orally?

A Orally.

Q Did he give you names? Did he name names?

A No.

Q Did he tell you how many shareholders he contacted?

A I recall a specific discussion with him where he said it's evenly divided.

Q Did he tell you the total number of people he spoke to?

A By reference, I can total it up.

Q I realize that you want to be helpful.

A He didn't.

Q Just answer that.

A He did not tell me the total.

Q Did you ever learn the total number of people or the total number of shareholders that he in fact did call to ascertain their attitudes?

A Yes.

Q How many?

A He told me he spoke to three people who liked the stock, he spoke to three people that didn't like the stock, and he spoke to two people that couldn't care less.

Q Have you ever learned that Mr. Schwartz on or about June 18th contacted 11 or more shareholders?

THE WITNESS: Would you repeat the question, please.

(Question read.)

Q Of NJB.

A Yes.

Q You did learn that?

A Yes.

Q When did you learn that?

A In the last day or so.

Q After you told Mr. Schwartz that he should contact shareholders to determine their attitudes, did

you subsequently have another conversation with him in which you advised him not to make any additional calls?

A Yes.

Q When was that? Was it later the same day?

A Or the next day.

Q Can you tell me in words or substance what you told Mr. Schwartz?

MR. KILL: I will allow the witness to answer what instructions he gave --

A Don't make any more calls.

Q Can you tell me anything else you said to Mr. Schwartz on that occasion other than that which your attorney believes to be in violation of the attorney-client privilege?

A No, I can't.

* * *

Excerpts from Deposition of William P. Miller

Q Have you brought to the attention of the Securities and Exchange Commission that an employee of Cantor, Fitzgerald had called or contacted more than 10 shareholders of NJB to determine whether or not they would be in favor of the calling of a special meeting of NJB?

A I never testified to that.

Q I know. That is my question.

A No.

MR. KANTOR: Read the question back.

MR. KILL: He answered it.

Q The answer is no?

A "No."

Q Have you ever advised the NASD that in or about June 1974, an employee of your firm, namely, Mr. Schwartz contacted in excess of 10 shareholders with respect to whether or not a special shareholders' meeting of NJB would be desired?

A No.

MR. KILL: I would like to put on the record the answers to the last two questions do not suggest -- and I am not sure how they will read -- agreement by the witness or by Cantor, Fitzgerald with the facts contained in the question, or the purported facts contained in the question, about contacts with shareholders for specific purposes.

Q Let's go further. Just so there can be no dispute about it and no quarrelling with my question, to your knowledge, has anyone on behalf of your firm advised the SEC or the NASD of the fact that Mr. Schwartz called a number of shareholders in and about June 1974 for whatever purpose he may have called these people?

A No.

MR. KANTOR: There can't be any problem with that question and answer.

MR. KILL: I didn't have any problem with the prior questions, except in reading transcripts,

it would seem the witness agreed with the underlying facts when in fact he didn't agree with the underlying facts.

Q Prior to Mr. Schwartz making any telephone calls to shareholders of NJB to ascertain their attitudes, did you acquaint Mr. Schwartz with 14a-11 of the SEC proxy rules?

A I did not acquaint him of such rules.

Q To your knowledge, was Mr. Schwartz aware at that time, namely, in mid-June, of the existence of Rule 14a-11, as well as the substance of same?

A No.

MR. KILL: If you know.

A No. Not to my knowledge.

Q Were you aware, sir, in June of 1974, when you gave this instruction to Mr. Schwartz that he should contact shareholders to determine their attitudes, of Rule 14a-11 of the SEC proxy rules?

A May I examine those rules?

Q I have a copy right in my hand and I will be happy to put it in front of you.

(Short pause.)

A I have no recollection of being familiar with these rules.

Q To your knowledge, has Cantor, Fitzgerald made any filings with the Securities and Exchange Commission pursuant to Rule 14a-11(c) or Schedule 14B of the SEC proxy rules?

A May I examine that rule?

Q I am putting in front of you 14B and the pages that refer to the Rule.

(Short pause.)

MR. KANTOR: Read the question, please.

(Question read.)

Q With respect to the solicitation of proxies of NJB.

MR. KILL: I object to the form of the question to the extent it implies there has been any such solicitation. But I will allow the witness to answer with that understanding.

A No.

Q To your knowledge, has Cantor, Fitzgerald made any filings with the SEC whatsoever with respect to NJB on the subject of proxy solicitations?

A No.

MR. BRAININ: I assume I have the same continuing status.

MR. KANTOR: As always.

Q Do you know whether or not D-Z made any filings with the SEC with respect to proxy solicitations relating to NJB?

A No, I do not.

Q Do you know whether anyone on D-Z's behalf made any such filings with the SEC?

A No, I do not.

Q Prior to your asking Mr. Schwartz to contact NJB shareholders to ascertain their attitude, did you discuss that with Mr. Davis?

* * *

A Yes.

Q When did this discussion take place?

A Right following the annual meeting.

Q Where did this discussion take place?

A In my office.

Q Who else was present at the discussion?

A Orbe. I am not sure of the other people that were there.

Q It was at least Orbe, Davis and yourself?

A Yes.

Q You are not sure whether there were additional people?

A Yes.

Q Who initiated the subject, namely the subject of possibly contacting shareholders to ascertain their views? Was it initiated by Mr. Davis, or by either yourself or Mr. Orbe?

A Excuse me. I now misunderstand the entire question. Excuse me.

(Discussion off the record.)

THE WITNESS: I would appreciate if we could go three questions back, because I think the question you asked me is somewhat different than the one you are now posing to me.

Q What I sought to ascertain from you -- I don't know if it's three questions back or how many questions back -- is whether or not you discussed with Mr. Davis the subject to someone from Cantor, Fitzgerald contacting shareholders of NJB to ascertain what their attitudes were.

A I never discussed that with Mr. Davis.

Q You never discussed that with him?

A No.

Q What you discussed with Mr. Davis was the possibility of people being contacted to see whether or not they want to sell shares. Is that correct?

A That's correct.

Q Now we have that ambiguity cleared up.

Did it ever come to Mr Davis' attention, as far as you know, that Schwartz or anyone else at Cantor, Fitzgerald had in fact contacted shareholders at your request to ascertain what their attitudes were as opposed to whether or not they wanted to sell shares?

A Yes.

Q How did Mr. Davis learn that these telephonic contacts had been made?

A I communicated to him perhaps some of the remarks that Mr. Schwartz made to me.

Q And when was this, sir? Was this prior to your going back to Mr. Schwartz or the third time on June 18th and telling him not to make any more calls, or was it after the third conversation of June 18th?

A It would have been after he made calls.

Q As I understand it, you had at least three conversations with Schwartz on June 18th. One was when you told him not to solicit any more stock for purchase --

MR. KILL: Subject to the word "solicit, solicitation".

Q -- and the second is when you asked him to contact shareholders to determine attitudes, and the third is whenyou told him not to do the number two any

longer, namely, not to call any shareholders.

A I'm not sure whether that would have been the same day or the same morning, discussion number three. I don't recall.

Q When did you advise Mr. Davis that Mr. Schwartz was making these calls to determine attitudes?

A Probably sometime after those three communications to Mr. Schwartz.

Q Are you sure it was after conversation number three and not before conversation number three?

A No, I am not sure.

Q You don't know exactly what the sequence was?

A No.

Q Do you know when you spoke to Mr. Davis whether your counsel had already given you whatever advice he gave you with respect to telephoning these shareholders?

THE WITNESS: Can you repeat that question, please.

(Question read.)

A I don't recall.

Q Do you recall what you told Mr. Davis and what he told you? Was this a telephone conversation? Hold that question. Was it a telephone conversation?

A Yes.

Q What did you tell Davis and what did he tell you?

A I said we checked some attitudes of some shareholders, and three were happy with the investment, three were unhappy with their investment, and two really didn't care.

Q Did you tell him anything else?

A Not that I recall.

Q Did you tell him thatSchwartz had called in excess of 10 shareholders of NJB?

A I did not.

Q Did you tell him whatever your counsel, Rubin, Wachtel, had told you about these telephone calls?

A No, I did not.

Q You didn't tell him?

A I don't recall exactly what I told him.

Q Did you discuss with him the possibility -- him being Davis -- of whether or not there might have been a violation of the SEC proxy rules in making these telephone calls?

A No, I did not.

Q Have you ever discussed with Mr. Davis, up to and including the present time, whether or not Cantor,

Fitzgerald had violated the SEC proxy rules by making these telephone calls to determine the attitudes of the shareholders, as you put it?

A Yes.

* * *

Q Did you have any conversations with Mr. Davis without the presence of counsel in which the subject of possible violation of the proxy rules was discussed?

A Will you give me a moment to think?

Q Wh not.

(Short pause.)

A I don't believe so.

Q You don't believe you had any discussions with Mr. Davis outside the presence of counsel?

A That's correct.

Q Have you had any discussions with any other principal of D-Z, other than Mr. Davis, about the subject of possible violation of proxy rules, which conversation took place without the presence of counsel?

A No.

Q Have you had any discussions with Mr. Schwartz about this subject without the presence of counsel?

MR. KILL: Or without instructions of counsel in talking with Mr. Schwartz in connection with this litigation.

A No.

Q How about Mr. Orbe?

MR. KILL: The same instruction.

A No.

Q So it is your testimony you have had no discussions about the subject of possible violation of the proxy rules other than as your attorney contends is covered

by the cloak of the attorney-client privilege or the work product privilege. Is that correct?

A Yes.

Q Since January 1, 1974, and continuing up to date, has Cantor, Fitzgerald purchased any shares of NJB for its own account?

A No.

Q You are certain of that?

A Yes.

Q Have you checked that recently?

A Yes.

Q When?

A A week or so ago.

Q Does Cantor, Fitzgerald hold any shares of NJB as nominee for anybody?

A Yes.

Q How many shares do they hold as nominee and for whom?

A I don't know who, but all of the shares that we have in the D-Z account.

Q I am going to show you a list, Exhibit 31, particularly the name Jay & Company. Is Jay & Company a nominee of Cantor, Fitzgerald?

A Yes.

Q Is Jay & Company holding shares of NJB as nominee for someone?

A Yes.

Q Exhibit 31 reflects 61,000 shares. Correct?

A Right.

Q Is it your best belief that this 61,000 shares are being held as nominee for D-Z, Mr. Davis, or people associated with Mr. Davis?

A Yes.

MR. BRAININ: You are giving him three choices?

MR. KANTOR: Yes. All or any.

Q Is that correct, sir?

A Yes.

Q Do you know of any shares that are being held by Jay & Company or by Cantor, Fitzgerald as nominee for anyone other than D-Z or people associated with D-Z?

A No.

Q To your knowledge, since the end of February has Cantor, Fitzgerald acquired any shares of NJB for any customer of Cantor, Fitzgerald other than D-Z or persons or entities associated withD-Z?

A Yes.

Q Have these acquisitions been in substantial

amounts, as you understand that term?

A I would like you to explain that.

Q Let's try more than 100 shares.

A No.

Q You acquired no shares for anyone other than D-Z or people related to D-Z in an amount of more than 100 shares each?

A Correct.

Q What is the total number of shares, as you best can tell me, which have been acquired by Cantor, Fitzgerald for all persons other than D-Z?

A 20.

Q 20 shares?

A Yes.

Q A total of 20 shares? O.K.

MR. KILL: Off the record.

(Discussion off the record.)

BY MR. KANTOR:

Q At the present time is Cantor, Fitzgerald holding any shares in the name of Jay & Company as nominee?

A Yes.

Q Have they been holding shares in the name of Jay & Company as nominee throughout all of June and up to the present time in July?

A Yes.

Q Do you know when they commenced to hold shares as nominee? Was it in May?

A For our first purchase for D-Z.

Q Since April. Is that true?

A Yes.

Q So Cantor, Fitzgerald has been holding shares of NJB as nominee since April, when the first purchase was made?

A With the exception of 20 shares.

Q When did you first meet Mr. Davis, Bruce W. Davis?

A October '73.

Q Would you just briefly relate to me the circumstances under which you met this gentleman?

A I was introduced to him by Willard Malkam for purposes of doing a real estate transaction of property either owned or controlled by Mr. Davis or his company in Atlanta.

Q Where did you meet Mr. Davis? Was it in Atlanta?

A At his office in Atlanta.

Q Was any other officer or employee or director of Cantor, Fitzgerald with you when you had this initial

meeting with Mr. Davis?

A No.

Q To your knowledge, when did Mr. Orbe first meet Mr. Davis?

A I don't know. I am not sure whether it was at that meeting or sometime two or three months later. I really don't recall. But I went on a trip to Atlanta with Orbe and Steve Lee, who worked for Mr. Orbe, and we each went our separate ways. I went to Bruce Davis. I am not sure whether that was my first meeting with him or a subsequent meeting, and Mr. Davis met Mr. Orbe that night when he met us for dinner.

Q To your knowledge, that was the first time Mr. Orbe met Mr. Davis?

A Yes. It either was in October or January. I don't recall.

Q But you are fairly clear that Orbe was not with you the very, very first time you met Davis in Davis' office in Atlanta when you went down there for this real estate business?

A I was with Willard Malkam.

Q When is the first time that you had any discussions with Mr. Davis as to your firm rendering services to Mr. Davis as opposed to vice versa?

A January, February of 1974.

Q Am I correct that when you initially met Davis you went down there in effect seeking his services or his assistance?

A To buy real estate from him.

Q The first time that Davis and you met for you to render services to him was sometime in January or February, correct?

A Yes.

Q Did this meeting take place in your office?

A Yes.

Q Was Mr. Orbe present at this meeting?

A Yes.

Q Without belaboring it, because I think we have covered the subject fairly completely, can you just summarize in the most succinct terms the essence of this meeting?

A To my recollection, he had an idea of acquiring controlling interest in a public company that had been offered to him, and he asked us our views on its value and could such a transaction be worthwhile.

Q Was that Data Lease?

A No.

Q At that time did Mr. Davis make any state-

ments beyond the specific deal that had been offered to him? Did he talk about any desire to obtain through merger or acquisition an expansion of the business of Security Management Corporation?

A Yes.

Q You knew at that time who Security Management Corporation was?

A Yes.

Q You were well acquainted with the business of Security Management Corporation?

A Yes.

Q Do you recall what Davis said, if anything, about his desire to expand that business through merger or acquisition?

A Yes. He wanted to expand his involvement in real estate and financial activities.

Q Was he specific or clear on what he was coming to you for? Was he coming to you to render investment banking services?

A At that time he was coming for just advice.

Q Just general financial advice?

A Yes, as a friend.

Q Thereafter were there subsequent meetings in which this relationship became a business relationship as

opposed to him seeking friendly advice?

A Yes.

Q You say as a friend. How well did you know Mr. Davis in January and February, 1974?

A I developed a very rapid personal relationship withMr. Davis.

Q After this meeting in your office where he presented this specific transaction and you had this generalized discussion about the desire to expand the Securities business --

A The "securities business"?

Q Yes. The business of Securities Management.

A You said "securities business." I didn't know what you meant.

Q That's Securities -- with an initial capital "S". Was there any subsequent meeting in your office between you and Mr. Davis?

* * *

BY MR. KANTOR:

Q This meeting that you had subsequent to the initial meeting, regardless of what took place at the initial meeting, do you recall what the subject of the second meeting was?

A Yes.

Q What was the subject?

A The company Larry Orbe wanted to bring to his attention.

Q Do you recall the name of that company?

A Data Lease Financial.

Q Was there any discussion at this second meeting beyond the subject of Data Lease?

A No.

Q By the way, this meeting took place in your office, also?

A Yes.

Q Did there come a time when a discussion of REITs took place in your office?

A Yes.

Q Can you roughly put a time frame on that?

A I would say perhaps March.

Q Who was present in your office?

A Davis and perhaps Orbe.

Q Can you give us the thread of what was discussed by Mr. Davis and yourself at this meeting?

A Yes. He said that the REIT industry was in a period of distress and he thought that he could take control of a REIT and it would be a worthwhile situation.

Q Did he say what if anything he wanted you folks to do in connection with this? By you, I mean Cantor, Fitzgerald.

A At that initial meeting? No.

Q Did you have any understanding as to why Mr. Davis was telling this to you?

A Yes. He wanted my views.

Q Is it fair to say that this idea about REITs initiated with Mr. Davis as opposed to Cantor, Fitzgerald?

A That is correct.

Q Was there any discussion at this meeting at which Mr. Davis raised the matter of REITs as to any specific duties or activities or services to be rendered by Cantor, Fitzgerald to assist Mr. Davis with respect to REITs?

A No.

Q Subsequent to this conversation between yourself and Mr. Davis and Mr. Orbe, what if anything did

Cantor, Fitzgerald or any employee or officer or director of same do to assist Mr. Davis? I am talking in a time frame of immediately after the meeting.

MR. KILL: I think you mentioned Mr. Orbe. The witness testified he was not sure whether Orbe was there or not.

Except for that, please answer the question.

MR. KANTOR: If Orbe was in fact there, we have his testimony.

A We proceeded to educate ourselves on REITs.

Q When Mr. Davis came into the office, did he bear any financial information with him? Did he bring any financial information about REITs?

A I don't recall at that first meeting. We had many meetings after that, as you can appreciate.

Q Subsequent to that initial meeting, did Cantor, Fitzgerald do anything to assemble financial information with respect to the REIT industry in general, or any particular REIT or group of REITs?

A Yes.

Q What did you do?

A We assisted him in procuring public information.

Q Who is we? You or someone else?

A Me and Orbe.

Q What did you do, if anything, personally?

A I personally called a friend of mine at Leasco Data Centers, which has on microfiche filings of public corporations, and Larry Orbe called -- that's all asked of me -- in order to procure the latest public filings.

Q What if anything did Mr. Orbe do at that time?

A He contacted a friend of his at the American Stock Exchange for purposes of trying to see if we could get copies of public information which they had on file.

Q What did Mr. Davis do, if anything?

A He wrote a lot of letters.

Q Why were you seeking to assemble all this financial information and other information about REITs?

A To evaluate them.

Q Was it your understanding at that time that this information was necessary to evaluate the advisability of making an investment in one or more REITs?

A Yes.

* * *

Q Can you tell me approximately how many you

A Half a dozen to a dozen.

Q Was it hundreds?

A No.

Q Was it 25?

A No, it was probably less than a dozen?

Q Was NJB a dozen?

A Yes.

Q Did there come a time when this dozen or so was reduced to a smaller number?

A Yes.

Q When was that?

A One number.

Q Just one?

A It was reduced to one.

Q It was reduced from a dozen to one?

A Yes.

Q Do you know anything about there being 100 which were reduced to 25 which in turn were reduced to four?

A No. There was the initial amount which was then reduced to four which was then reduced to one?

Q You think the initial amount was a dozen, a dozen from four to one?

A That we assembled information or assisted.

Q Everybody?

A No, Mr. Davis, I understand, according to his discussion with me reviewed the entire industry and, therefore, must have started with the total number of REITs that were publicly traded.

Q In your discussion with Mr. Davis, what was the first number that he started with?

A 21 or 22.

Q That was reduced ultimately to one namely NJB?

A Yes.

Q What point of time was it reduced to NJB?

A A few days before we went to visit Skadden, Arps.

Q When was that?

A I do not have a recollection of the date. In our meeting with Skadden, Arps, we had reduced that number to one.

Q At what point?

At that time as these discussions progressed, what was the role of Cantor, Fitzgerald to be, if any, in Mr. Davis' quest for a REIT?

A Counsel, assembling, advising information with respect to these trusts.

Q Was it anticipated that Cantor, Fitzgerald would be remunerated for its efforts?

A Yes.

Q Was there ever any discussion between yourself and Mr. Davis about any equity participation between Cantor, Fitzgerald or any partner, officer or employee of Cantor, Fitzgerald with Mr. Davis?

A No.

Q The subject never came up?

A Equity participation?

Q Yes. Do you understand what I mean by the phrase equity participation?

A Yes. I discussed it with Orbe, I recall.

Q When was that?

A Sometime at the very beginning of what was going on.

Q What did you say to Mr. Orbe and what did he say to you?

A I asked him whether he wanted to participate in an equity position with Mr. Davis.

Q What did he say and what did you say?

A The discussion concluded in our decision to be not an equity participant.

Q Was the subject of an equity participation ever raised with Mr. Davis?

A Sometime early in our conversations, he indicated that if we wanted to be an equity participant with him, he would be pleased to have us along with him.

Q When did that take place, sir?

A About as we were narrowing that list down.

Q Did there come a time when that willingness to have you be an equity participant no longer was available

A No, we rejected --

Q You rejected it?

A It wasn't presented. I in fact spoke to Orbe prior to his making it available to us.

Q It is accurate to say that it is no longer available for you to be an equity participant with Mr. Davis with respect to NJB?

A I don't know.

Q You do not know one way or the other?

A No, the subject has not come up again.

Q Is Cantor, Fitzgerald to receive any compensation in the event that Mr. Davis is successful in acquiring control of NJB beyond that which is set forth in the various letters between yourself and Mr. Davis?

A No, it is not.

Q No contingent compensation?

A There is no contingent compensation, that's correct.

Q Is there any understanding, express or informal in the event that Mr. Davis gains control of NJB, Cantor, Fitzgerald will derive any economic advantage from that fact?

A Yes.

Q What is the understanding?

A That we would not have a customer who is in control of a large public corporation and an investment banking firm can look to its customers to perform for the other services for which it can be paid.

Q I don't understand enhancing the status of your customer which would accrue to your benefit as you outlined, is there any understanding between yourself, Mr. Davis that if this attempt by Mr. Davis to gain control of NJB is successful that you will be offered anything.

A There is no such understanding.

Q Just so we are clear. There are no informal options for you, any officer or employee of Cantor, Fitzgerald, any member of the family of any such person to acquire on any advantageous basis any shares in NJB?

A That is a correct statement.

Q It is equally true that there are no understandings express or implied, written or oral or informal that you or any officer or director of Cantor, Fitzgerald or any member of your family or the family of any such people will obtain any options, warrants or any type of interest in the securities of any company other than NJB, by that I mean included but not limited to D-Z, any company to be formed in the future by merger or otherwise, Security Management Corporation or any other

concrete owned or controlled in any way by Mr. Davis?

A That's correct.

Q It is your testimony you are to receive exactly what these letters say you would receive and nothing more, correct?

A Correct. Excuse me a second.

(Discussion between the witness and his counsel off the record)

Q Just to nail this down beyond any shadow of any doubt. I am putting before you Exhibit No. 7 which is the 13(d) filed on behalf of D-Z Investment Company and particularly I am directing your attention to a letter of April 25, 1974 on your letterhead to Mr. Davis signed by you and accepted and agreed to by Mr. Davis. I am also putting before you exhibits -- let's start with that. Is there any understanding as to any remuneration, compensation or any consideration to flow to you or anyone else in the employ of Cantor, Fitzgerald, an officer, employee or director or the families of any such people except as outlined within the express terms of this letter?

A May I review the letter, please.

(Pause in the proceedings)

A That's my full understandings.

Q I am not trying to give you a trick question here. This letter, the April 25th letter refers to prior letters of May 22nd and April 16th, am I correct, sir?

A Yes.

Q I will put before you the March 22nd letter, which is Exhibit 28, and the April 16th letter which is Exhibit 30. Are you familiar with these documents, sir?

A Yes.

Q You were in fact the author of all these three letters that are before you now, correct?

A No.

Q I misstated the fact. Mr. Orbe is the author of the March 22nd letter. You are the author of the April 16th and April 25th letter, correct?

A Correct.

Q There is yet a third letter that's been produced to us under date of April 24th, 1974 to Mr. Davis signed by you and a copy we have is not agreed and accepted to by Security Management. This has been marked as Exhibit 23. That's before you now also, correct, sir?

A Yes.

Q The April 25th letter which is appended to

the 13(d) makes no reference to the April 24th letter, am I correct?

A That's correct.

Q Has the April 24th letter ever been accepted by Security Management Company?

A I don't believe it has.

Q Do you know one way or the other as you sit here today?

A No. It is not signed. It is my feeling that this letter was never communicated to them.

Q YOu signed it, correct?

A Yes, I signed a lot of things that are put down in front of me.

Q There is a received stamp received April 24th, Security Management?

A Yes.

Q That indicates to me that Security received it?

A But it would be evident that if this letter is dated April 24th and this letter is dated April 25th that this letter was received April 26th, that this one obviously was obsolete by the time it was received.

Q This is why I am asking the question obviously. I am trying to find out whether or not the April 24th

letter is in existence since -- when I say in existence, I mean is a live arrangement, since it is not referred to in the April 25th letter, nor is it rescinded by the April 25th letter since it is not referred to in the April 25th letter and is therefore conspicuous by its absence.

MR. KILL: I am not sure I followed the question, Mr. Kantor.

Q Do you understand the question?

A Yes.

Q Can you answer the question?

A The answer is I don't understand.

Q Let me ask you this: Let's take away these panoply of letters and just put before you the April 25th letter and the April 24th letter. To your understanding, does the April 25th letter undertake to compensate you for any financing which your firm may arrange for Mr. Davis with respect to NJB?

MR. KILL: The letter speaks for itself. You may answer.

A Does this letter --

Q I am not asking you what's on the face of a document. Any literate person can compare two sets of documents and see what one contains. I am asking you,

from your knowledge, as Mr. Miller senior vice-president of Cantor, Fitzgerald whether it was intended that the April 25th letter would cover the giving of compensation to Cantor, Fitzgerald for any financing?

A No. This letter of April 25, 1974 does not refer to any compensation that we would receive on financing.

Q What I am asking you then is, the document cannot answer me, was it intended by the April 25th letter to cover this subject of what, if any, compensation Cantor, Fitzgerald would be entitled to if they arranged financing for Mr. Davis in relation to NJB?

A No.

Q Did you have any discussions with Mr. Davis about the subject of Cantor, Fitzgerald arranging financing for Mr. Davis and/or D-Z Investment Company?

A Yes.

Q When did these discussions first take place?

A As we began -- sometime prior to the purchasing of stock Mr. DAvis indicated he wanted to purchase the stock on margin and would need additional or would need financing of that stock on margin. I believe margin financing would be considered financing under the question that you asked.

Q What did you say to Mr. Davis?

A I secured margin financing with him at Cantor, Fitzgerald.

Q Was there any limit as to the total amount of financing you would supply via the margin route?

A Could you clarify the question?

Q Did you tell Mr. Davis at the outset "We will only supply dollars blank of margin financing, period"?

A No.

Q In other words, we will supply up to "And you plug in whatever number exists if it is relevant?

A No, I never said that.

Q You never put it in terms of that you had a limit dollar-wise?

A No.

Q Did there come a time when you told Mr. Davis that you would no longer advance any more funds to Mr. Davis or to D-Z in connection with NJB margin purchases?

A Yes.

Q When was that time?

A As we were approaching the 100,000 shares.

Q Was that the first time that you ever mentioned to him that there would be a limit to what you would supply?

A No, sometime prior to that I said I would extend margin to 100,000 shares, no dollar limitation.

Q Why was it keyed to 100,000 shares? What was your reasoning?

A Company preference.

Q Was it arbitrary?

A Yes.

Q Did you have any policy?

A Arbitrary.

Q 100,000 shares would involve how many dollars as you understood it?

A At the time I think the stock was approaching $7 and 100,000 shares would have been $700,000 and half of that would have been $350,000.

Q What you are telling me and what your testimony is your willingness at the outset was to go $350,000 with Davis on NJB, correct.

A No.

Q What was it?

A I said we would extend margin for 100,000 shares. I did not make anycomputation of dollars.

Q Whatever it was, it was a figure of 100,000. Did you discuss this with anyone in Cantor, Fitzgerald as to how far you would extend margin?

A Yes, Larry Orbe.

Q Who made the decision, you, he or was it a joint decision?

A It was me.

Q Was there any reason for your willingness not to extend margin financing at the outset beyond 100,000 shares?

A Was there any reason?

Q Yes.

A No.

Q Were you worried about the credit of Davis or whatever entity would be doing business with on NJB?

A No.

Q Was there any reason other than what you said "Company preference" which I don't understand means.

A Good, sound business practice. No, no reason.

Q Was the reason, the colloquial you do not put all your eggs in one basket. In other words, you did not want to plunge too deeply with Davis on NJB?

A No.

Q If it wasn't diversification of credit risk, what was the reason? Was it a reasonable thing or was it an arbitrary thing?

A I don't know if you are familiar with the brokerage industry, but all brokerage firms rehypothecate their security generally at banks in order to secure credit. It was my opinion that 100,000 shares for the firm of Cantor, Fitzgerald was an adequate number that I wanted to rehypothecate at a bank.

Q Did there ever come a time that you changed your mind?

A No.

Q It has been 100,000 throughout?

A Approximately, something less than 100,000.

Q Give or take. Did you at the time that you told Mr. DAvis that you would be willing to finance up to 100,000 shares tell him that you would attempt to obtain additional financing from him from other sources?

A Yes.

Q When did you tell him that?

A In the beginning.

Q Did you mention what other sources and what other type of financing you were talking about?

A Additional margin financing at other institutions.

Q Did you identify these institutions as being brokers or did you also include banks or other financial institutions?

A No identification to him.

Q What did Mr. Davis say about it?

A No comment, fine, that's what he wanted us to do.

Q Did you ever discuss with Mr. Davis your obtaining financing other than margin financing?

A Yes.

Q When was your initial discussion with Mr. Davis about this subject?

A Sometime in June.

Q Is that the first time it came up?

A No. Perhaps sometime in March.

Q Can you just give us the substance of the conversation, sir?

A Yes. I refer specifically to financing that was going to be supplied by CNA, I am not sure of the rest of the name of the company.

Q CNA, the Silverstein relationship?

A Yes, that's what I am referring to.

Q PUtting aside the CNA transaction, let's start after the CNA transaction went by the Boards. We do not have to belabor this. In the time that Davis knew that he could not make a deal with CNA up to and including the present time, when was the first time you discussed the obtaining of financing other than margin financing for Davis or his company what is now D-Z

Investment?

A Sometime in early June.

Q Did Davis over tell you how he was going to raise the additional 50 percent which was necessary for him to buy stock on 50 percent margin financing?

A Yes.

Q When did he tell you that? When did he first tell you how he was going to raise it?

A I think in April when he first started purchasing his stock.

Q Was it a personal meeting or a telephone conversation?

A It was a personal meeting. I asked him where his money was coming from.

Q Let's just hold on that for a minute. Where did the meeting take place?

A I don't recall.

Q Was it in New YOrk or was it Atlanta?

A I don't recall.

Q Have you been to Atlanta to see Mr. Davis in April?

A Between now and January I have been there as many as ten times.

Q YOu do not know where the meeting took place?

A That's correct.

Q Do you recall if anyone else was present besides yourself and Mr. Davis?

A Perhaps Mr. Orbe.

Q I know you are doing your best. You just do not remember?

A I do not place significance on the discussion so I do not have a recollection.

Q You do not know whether or not Orbe was there. You have no recollection one way or the other?

A No.

Q Apparently you do not remember if anyone else was there besides Orbe, yourself --

A One of the Becker brothers.

Q You do not specifically remember the cast of characters beyond yourself and Davis, okay?

A Correct.

Q What did he say to you?

A He said Zimmerman is going to supply the money with myself.

Q At that time did you know who Zimmerman was?

A No.

Q Did he then identify who Zimmerman was?

A Yes.

Q What did he tell you about Zimmerman?

A He is a fellow that he did the 14th Street property deal with that he had previously described and then he was a fellow that he also did the 14th Street property deal with that I was trying to buy from Bruce in December and in fact I was taking that transaction away from Zimmerman. He made some representations that Zimmerman was a very substantial citizen and a long-time resident of the Atlanta community and he was looking to him for financial support in the transaction and was assured he was going to get it.

Q Did he tell you where Zimmerman was going to get the money from that he was going to put up?

A He indicated to me -- yes.

Q What did he tell you?

A He indicated that Zimmerman had a very close select group of friends who had invested with him in Bruce's prior real estate transaction, who probably would like to participate with him in this venture.

Q Did he indicate the basis on which Mr. Zimmerman would obtain the funds from this select group you referred to in Atlanta?

A No.

Q Did he tell you that Mr. Zimmerman was going to raise this on a debt basis by the sale of notes from an

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entity to be formed, which entity was to be the vehicle in which the NJB shares would be acquired?

A No.

Q Was it your understanding at that time that the Zimmerman group were to be equity participants in the new entity?

A Yes.

Q Did there come a time when you learned that that was not so?

A Yes.

Q When was that?

A Upon the filing and the glancing that I looked at the 13(d) that was sent over to my office by Rubin Wachtel.

Q What did you tell him?

A I said who the hell are these guys?

Q Beyond making that statement, did you do anything else?

A Yes, I called Bruce and said "Who the hell are these guys?"

Q What did Bruce say to you?

A He said those are Zimmerman's buddies, and we left it at that.

Q Did you discuss with Mr. Davis at this time

the basis on which Mr. Zimmerman had obtained monies from these people?

A May I look at 13(d)?

Q By my guest.

(Pause in the proceedings)

A No.

Q Did you ever learn that the stock of D-Z would be a security for these notes which Mr. Zimmerman had succeeded in selling to this Atlanta group?

A Not at all.

Q You never learned that?

A Up to this moment, I don't know that.

Q You do not know that even now?

A No, sir.

Q Are you aware of any assets that D-Z now has or has ever had other than its shares in NJB stock?

A Yes.

Q What assets?

A As a result of reading the testimony of Bruce Davis two days ago, it appears as if he owns several hundred shares of other REITs in other institutions.

Q Do you know now the approximate dollar value or substantiality of these assets?

A A few thousand.

Q Is it your testimony as you sit here today that other than a few thousand dollars in miscellaneous other REIT stock that you now know that all or substantially all of the assets of D-Z consist of their NJB shares, correct?

A Correct.

Q When you read the 13(d), did you learn from the 13(d) that Messrs. Zimmerman and Davis or more accurately Security Management Corp. and Zimmerman had pledged to these Atlanta noteholders their interest in D-Z?

A I did not know that's in here now.

Q You did not learn it then when you read it?

A I said I glanced at it.

Q Did you glance at it at the time you received it or did you read it, sir?

A I glanced at it.

Q Is that how you read documents normally, by glancing at them?

A Yes, some documents.

Q Can you define glance for me?

A I quickly turned the pages to see if there would be anything to catch my eye and more particularly in

this document I went to the schedule of shares acquired to see that it was in conformity with the schedule that I had supplied Mr. Davis' counsel with.

Q Your glance was enough to give you enough information to call Mr. Davis and say "What the hell is going on" or words to that effect?

A That's true because when I got to the last page there were a whole lot of names and addresses of people that I never saw or heard of before.

Q That's the first time you learned of these other people?

A That's correct.

Q Up to that point you thought you were dealing with Messrs. Davis and Zimmerman, is that correct?

A That's correct.

Q How about Becker?

A And the Becker brothers.

Q And the Beckers?

A Correct.

Q When you read 13(d) which is now in front of you, Exhibit 7, that was the first time you learned about these other folks in Atlanta?

A Yes.

Q Did there come a time, sir, when you or anyone

in your company obtained a copy of a so-called private placement memorandum which had been issued by D-Z to this Atlanta group of people?

A Yes.

Q When did you obtain that private placement memo?

A Somewhere around the time that the date it bears.

Q Let me put before you this document.

MR. KANTOR: Please mark as Exhibit 32.

(Private placement memo marked Defendant Trustee's Exhibit No. 32 for identification, this date.)

MR. KANTOR: Please mark another document headed "Certificate and Purchase order" as Exhibit 32A and another document entitled D-Z Investment Company, 6 percent promissory note due March 31, 1975 Exhibit 32B.

(Documents described above marked Defendant Trustee's Exhibit No. 32A and 32B for identification, this date.)

Q You wanted to say something?

A I would like to direct my answer to be a little more exact, in that I did not see the document you just showed me until after I saw Exhibit 7.

Q What document did I just show you?

A You just showed me an offering.

Q I haven't showed it to you yet.

A You showed it to me.

Q It was just marked. It was physically on the table but I did not mean to show it to you.

A Didn't you ask me if I saw it and I said at or around the time it was dated.

Q I haven't yet marked it or showed it to you. YOu jumped the gun.

MR. KILL: Let's go on.

Q I am now going to show you documents 32, 32A and 32B which I represent to you were submitted to us by your counsel, Mr. Kill, in the last several days. I ask you whether or not you have ever seen these documents before my putting them before you right now.

A The only document I have ever seen before is 32.

Q Do you know who, if anyone, ever saw 32A and 32B?

A No.

Q I might also state for you --

MR. KILL: May I interrupt you.

MR. KANTOR: These were all one document.

MR. KILL: We produced these?

MR. KANTOR: Yes.

Q These documents exist in other files as one document. Is it possible that you saw what is now 32, 32A and 32B as one document held together with a staple?

A Since I have never read the contents of them, I don't remember.

Q 32A and B you do not think you have ever read, is that right?

A I have not read 32 either. I never read any of those documents.

Q Do you know when your office was supplied with 32 and 32A and 32B?

A Yes.

Q When?

A By Bruce Davis when he was in my office.

Q At approximately what point in time, sir, can you place a date on it?

A It was a week or two after the filing of this 13(d) when he was in New York.

Q He gave you the private placement memo --

A No, he did not give it to me. I asked him for it. He said "You mean you do not have one?" I said, "No, I do not have one." He said, "Let me see if I have a copy for you." He reached for a copy in his briefcase and put it on my desk.

Q That's giving it to you, isn't it?

A Yes, he did give it to me.

Q You say you never read it thereafter?

A That's correct.

Q I am not disputing you.

A I did not say you did. I said that's correct.

Q There is no need to be emphatic about it.

A If I keep saying I never read it and you keep asking me I never read it obviously there is some dout in your mind. I am suggesting that I never read it.

* * *

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Q To your knowledge, did anyone read 32, 32A or 32B, which person being in the employ of Cantor, Fitzgerald? Did any officer or employee director of Cantor, Fitzgerald to your knowledge ever read the documents which have now been marked 32, 32A and 32B?

A Yes.

Q Who read these documents and please try to advise me when they read them?

A Larry Orbe.

(Continued on following page)

Q When did he read them?

A When I picked up a document and said, "Larry, I don't want to read this crap. You take it."

Q After he read this document did he come back and tell you anything about what the contents of it was?

A Yes, the next day.

Q What did he tell you?

A He said, "It is a lot of crap."

Q Were those his words?

A Yes.

Q That is what he said?

A Yes.

Q Those are his exact words?

A Yes.

Q Did he say anything else?

A No.

Q Did you ask him what he meant by the phrase "It is a lot of crap"?

A It is a lot of junk.

Q What did you mean junk, you mean this is nonsense?

A No, it didn't concern us.

Q Is that what he said, "It doesn't concern us"?

A That is right. That is my characterization of what I took him to mean. It did not concern us. It was a document that he was comparing with his counsel that did not concern us and I did not want to be concerned about it.

Q You knew, did you not, that your name was appearing on 13(d) in relation to NJB, did you not?

A Yes, my name is in this document.

Q You knew that you were advancing margin financing to D-Z, did you not?

A That is correct.

Q Are you aware of the existence of rules and regulations of the Federal Reserve Board affecting margin financing?

A Yes.

Q Are you aware then that you could not have 100 percent financing of the acquisition of stock?

A Yes, I think I am aware of that.

Q At one point, you became aware that you were providing 50 percent margin financing, and Zimmerman on a debt basis was providing the rest with some people in Atlanta, correct?

A I didn't even know it was a debt basis.

Q If you had read the documents, you would

have known that, wouldn't you?

MR. KILL: The documents speak for themselves.

Q If you had read the documents, you would have known that, right?

A If I would have read the documents, I would have known that.

Q And Mr. Orbe did read the documents, right?

A He glanced at them.

* * *

Q Is it your testimony, sir, that in May when this document was provided to you by Mr. Davis that you were not interested in ascertaining the basis upon which Mr. Davis had raised the additional money from the Atlanta people?

A Correct.

Q You were not concerned with that?

A I was not concerned with it.

Q Did you then know back in May whenever you got this document that this money was being raised on a debt basis?

A No, I did not.

Q The document, Exhibit 32, does state on the face of the private placement memorandum for issuance of up to $1,250,000 of six percent promissory notes, correct?

A Yes, I see that.

Q You understood that the word "notes" means debt, right?

A Yes.

Q The 13(d) also talks about debt, does it not?

A Yes, it does.

Q You did know by reading the 13(d) or

glancing at it, whatever adjective you want to use, that they were raising the balance of the money through the placement, correct?

MR. KILL: I will object to the form of the question.

Q Did you know?

A No, I did not.

Q You glanced at the 13(d), did you not?

A Yes, I did.

Q Did you learn by glancing at the 13(d) that D-Z was raising additional moneys for persons other than yourself on a debt basis?

A Yes.

Q Did you ever seek to inquire from Mr. Davis the basis on which this additional money was being raised through debt?

A No.

Q Did you ever try to find cut if there was any security involved?

A No.

Q Were you aware of Regulation T?

A Yes.

Q You were then or you are now?

A Yes.

Q And you were aware that you could not have more than 50 percent financing in connection with the purchase of security or margin, correct?

A That is correct.

Q But it never occurred to you to ascertain whether or not this additional debt flotation raised any problems under Regulation T, is that correct?

A That is correct.

Q Up to and including the present moment, have you ever sought to grapple with that problem as to whether or not this note flotation raises any problems under Regulation T?

A No.

Q You have never given this any consideration?

A No.

Q After Mr. Orbe read the document, he never raised the question with you?

A No.

Q Do you know if he ever raised it with anyone else?

A No.

Q Did you know in April or May as to whether or not Mr. Davis or Mr. Zimmerman had told these people from Atlanta what REIT Mr. Davis was interested in ac-

quiring control of?

MR. KILL: I will object to the form of the question.

A May I hear the question again?

(Record read back.)

A No, I did not know.

Q Did you ever seek to ascertain what if any information was supplied by Messrs. Davis and/or Zimmerman to the people in Atlanta to whom these notes were being offered?

A No.

Q Did you ever do anything to ascertain whether or not D-Z and Mr. Davis and Mr. Zimmerman were complying with the 1933 Securities Act in issuing whatever debt they were issuing to these people in Atlanta?

A No.

MR. KILL: I will object to the form of the question. You have the answer.

Q Did you ever become aware until a few days ago that I am reading from page 8 of Exhibit 32: "Security and Zimmerman will deposit the shares of the company, namely D-Z, owned by them in escrow with the Mercantile National Bank, Atlanta, Georgia as security for either the payment of said promissory notes due

February 21, 1970 or the registration the unit described above."

A It is the first time it has come to my attention.

Q Did you ask Mr. Davis why people were investing in six percent promissory notes of a shell corporation at a time when the prime rate of interest was upwards of ten percent?

MR. KILL: Objection to the form of the question.

THE WITNESS: No.

Q Did you ever make any inquiry of Mr. Davis or Mr. Zimmerman or anyone else as to what if any inducement was being given to these Atlanta people other than a six percent note of a so-called D-Z Investment Company?

MR. KILL: Objection to the form of the question.

A No.

Q You were aware at all times, I take it, that D-Z Investment Company is a shell corporation?

MR. KILL: Objection to the form of the question.

A Could you read the question?

(Record read.)

A Yes.

Q Do you know whether or not Mr. Davis and Mr. Zimmerman contemplated a second offering of securities in D-Z Investment Company after the six percent promissory notes?

MR. KILL: Objection to the form of the question.

A No.

Q Do you know whether or not these people that bought these six percent promissory notes were given any right to acquire any additional securities which D-Z might issue?

MR. KILL: Objection to the form of the question.

A No.

Q Is it fair to say that you really know nothing about the undertakings or dealings between Davis and Zimmerman and these people in Atlanta?

A Yes.

Q Other than the Beckers?

A Yes.

Q And you have never sought to inform yourself about this?

A Correct.

MR. KANTOR: Please mark for identification a letter dated June 17, 1974 on the letterhead

of Security Management signed by Miss Louise Dolan, secretary to Bruce R. Davis, to Mr. William Miller under date of June 17, 1974.

(Defendant's Exhibit 33 was marked for identification.)

Q Mr. Miller, do you know the reason why Mr. Davis' secretary was sending you Exhibit 33 and the enclosures there to which we have not marked at that particular time, namely on or about June 17, 1974?

A Yes.

Q What is the reason, sir?

A With respect to Mr. Davis' net worth statement, which we had a copy of which reflected his investments or Security Management's balance sheet which reflected their investments in these apartment projects at their cost basis, the representation was made to us that they were worth substantially more than the book value.

Q Why were you interested in Mr. Davis' worth on or about June 17, 1974?

A I believe a bank that I had sought to introduce Mr. Davis to, or people that I was discussing bringing Mr. Davis to in order to secure margin loans wanted complete records with respect to his personal net worth and the company's value.

In order to supplement those statements that were given to me, these would have been helpful.

Q Were these persons, banks or other institutions with which you were talking, were they talking solely about extending margin financing or were they talking also about extending other financing?

A The institutions I was talking to was talking about margin, regular traditional margin extension of credit.

Q There came a time, did there not, when you introduced Mr. Davis to other institutions other than your company with respect to margin financing, correct?

A Correct.

Q Why did you do this, sir?

A So that he could have financing for his stock purchases at those institutions.

Q This was part of your role, is that not so?

A That is correct.

Q You had made a commitment to obtain additional financing for Mr. Davis if you were able to do so?

A Margin financing.

Q Just margin financing?

A That is what -- yes.

Q Was it limited to margin financing?

A Yes, my role was limited to margin financing.

Q When was that clear, sir?

A The initial agreement that we signed you will see carries a legend with respect to our responsibility in securing additional margin financing.

Q My problem is, and we introduced this before, I think, we ought to try to nail this down, my problem is that the April 25 letter which supersedes the March 22 and April 16 letter, refers in the third paragraph thereof "In pursuance of that end, we shall use our best efforts to obtain funds sufficient to permit purchases of the shares of the company on margin. (provided such shares are marginable in accordance with applicable rules and regulations)."

Is that correct?

A Correct. It was in pursuance to that that I made the introductions that you were speaking about.

Q The April 24 letter we were referring to specifically, Exhibit 23 for identification, refers to financing other than margin financing, isn't that correct?

A Yes.

Q Someone has written in in hand here next to

Miller

the typed text the word "Other than margin financing," is that right, sir?

A Yes, that is what that says.

Q Is that in your hand?

A No, sir.

Q In whose handwriting is it, if you know?

A I don't know.

* * *

Q Did you have any discussions with Mr. Davis about your seeking to arrange financing other than margin financing form in connection with this NJB matter?

A Discussions, perhaps.

Q When were these discussions?

A Early June.

Q What were the discussions, sir?

A They were not with me, they were Larry Orbe.

Q Do you know what they were, whether they were with you or not?

A It was in regard to a proposed financing which eventually aborted.

Q Let me ask you this, when you wrote this letter, Exhibit 23 you said, "Pursuant to our continuing negotiations regarding your acquisition program the following will serve as our fee arrangements with you and/or your company."

What were you referring to?

A I would think the contemplation of this might have been -- can we go off the record?

MR. KANTOR: For a moment, yes.

(Discussion off the record.)

A I don't know.

Q The point is, as you sit here today, you don't know what acquisition program you would be referring to in this letter of April 24?

A That is correct.

Q You don't know whether this referred to a possible acquisition of NJB shares or some other acquisitions?

A I think it might have been drafted for purposes of just something in the file to protect us in case we did something. I have no specific recollection.

Q Is it fair to say that you did discuss your assisting Mr. Davis and this company in obtaining other than margin financing at one point in your relationship with him?

A Yes.

Q You did write this letter on or about April 24, correct.

A Yes.

Q It is not clear from the letter and you have no real recollection as to whether or not this letter refers to NJB or to some matter other than NJB, correct?

A Correct.

Q Did you bring Mr. Davis to Financial Resources Corporation?

A No, I did not.

Q When I say you, I mean your company. Did your company have anything to do with Mr. Davis, or D-Z Investment Company discussing possible financing with Financial Resources Corporation?

A Yes.

Q What type of financing was contemplated to be arranged between Financial Resources Corporation and D-Z Investment Company?

A Debt financing.

Q It was financing other than margin financing, correct?

A Yes.

Q Ultimately that financing, as set forth in Exhibit 15, aborted, correct?

A Correct.

Q Did you see Exhibit 15 or any other copy of Exhibit 15 at or about the time it is dated?

A This is the first time I have ever looked at that piece of paper.

Q Did you know anything about the potential deal between D-Z Investment Company and Financial Resources Corporation?

A Yes.

Q Who was handling that on behalf of Cantor, Fitzgerald?

A Larry Orbe.

Q Did Mr. Orbe keep you advised as to what generally was taking place?

A No.

Q Did he tell you anything about a potential deal with Financial Resources Corporation?

A Yes.

Q What did he tell you and when did he tell you?

A He told me that he introduced Bruce Davis to the people at Financial Resources and that he thinks Bruce was going to be able to cut a deal with them, and raise a substantial sum of money.

Q When did he make this introduction, as far as you know?

A Sometime in June.

Q Did he discuss with you whether or not there was any expectation on his behalf or on behalf of your company that Cantor, Fitzgerald would be compensated for arranging the financing or making the introduction?

MR. KILL: I will object to the form of the question.

A Yes, it was discussed.

Q What did he tell you?

A He said we ought to discuss it with our client when we are going to get compensated for this transaction.

Q To your knowledge, did he in fact have such a discussion?

A No, he did not.

(continued on next page.)

Q Why did you not?

A I said to him, let the transaction happen and if it happens, we will worry about our compensation later.

Q Did you have any understanding at that time that this Exhibit 23 was in effect?

A No.

Q As far as you know, from April 25 up to this time in June, was the subject of what if any compensation you would receive for arranging financing other than margin financing an open question?

A Yes.

Q In other words, it would abide the event, correct?

A Correct.

Q If you arranged such financing, you would then take up the matter with Mr. Davis?

A That is correct.

Q And the possibility existed that if you arranged such financing, you would be remunerated for so doing?

A That possibility existed, yes.

Q In fact, did you have any expectation that if you arranged such financing, namely, non-margin financing, that you would be remunerated?

A Yes.

Q You actually had an expectation of being compensated?

A I had an expectation that when I work, I don't work for nothing.

Q From June up to the present time, do you still have that expectation?

A If I arrange a financial transaction outside the general scope of our letter agreements with Mr. Davis, I expect to be compensated, yes.

Q Have you attempted to obtain additional financing on other than a margin basis since whatever this Financial Resources transaction went by the boards?

A No.

Q You haven't?

A No.

Q Is it your testimony that from mid-June up to the present time, you have not sought to attain financing for Davis or D-Z Investment Company on a basis other than margin financing, traditional margin financing as you put it?

A I can recall no such activity.

Q Are you aware of the fact that Mr. Davis

talking with a so-called Source A, a company which has not been identified to us and which the court ordered need not be identified to us but which is apparently a corporation engaged in the business of financing joint ventures?

A I read the testimony that referred to Source A and I am not sure I know who Source A is.

Q Did you have anything to do with introducing, and when I say you, I mean your company or any officer, director or employee of bringing Mr. Davis together in any respect and introducing Mr. Davis in any respect to a corporation engaged in financing joint ventures which we can call Source A?

A Yes, I have a recollection of such transaction, a joint venture.

Q I am not talking about CNA. Source A is not CNA.

A Okay.

Q Source A is a corporation whose business it is to apparently finance joint ventures. What I am asking you is, did you or did anyone in your company arrange or introduce Davis to Source A, to your knowledge?

A No, I don't know of any.

Q You have no knowledge one way or the other?

A No.

Q There is a so-called Source C and that is a gentleman who is described by Mr. Davis as being a friend of yours who is a retired Chicago individual. Don't tell me his name because you are not supposed to.

Do you know who that person is?

A Yes, I do.

Q Did you introduce Mr. Davis to this Source C?

A No.

Q You did not?

A No, sir.

Q Do you know how Mr. Davis got into contact with this man who is described as a friend of yours?

A From either an employee, a friend or relative of Mr. Davis'.

Q Not through you or Cantor, Fitzgerald?

A In the course of conversation, he determined that he could incidentally knew me, unrelated to my knowledge of Mr. Davis.

Q Not through your efforts?

A No, sir.

Q Is it your testimony that if Mr. Davis makes a deal with Source C, you don't expect to be remunerated

in any way?

A That is correct.

Q The same thing with Source A?

A I don't know about Source A.

I can't be compensated for it.

Q How about Source D, which is a corporation described as being involved in the business of real estate financing. Did you have anything to do with bringing Mr. Davis together with Source D?

Here, again, "you" is you and anyone else in Cantor, Fitzgerald.

A Yes.

Q You did?

A Yes.

Q Do you have any expectation of being compensated if Davis makes a deal with Source D with respect to NJB?

A Yes.

Q Are you or any employee, officer or director of Cantor, Fitzgerald participating in any negotiations with Source D?

A To my best knowledge, no.

Q Do you know whether these negotiations are presently ongoing?

A Yes.

Q They are?

A Yes.

Q How about if Mr. Davis ultimately makes a deal with Source B who is [illegible]'s Financial Resources Corporation, do you expect to be compensated if any deal is openly made between Davis and Financial Resources?

A To my knowledge that deal has died and there is no further discussion about it.

Q Let's put aside whether there is any further discussion about that particular deal. My understanding, perhaps erroneous is that there is ongoing discussion with Financial Resources Corporation for a possible financing on a basis different than this. I don't know whether that is right or wrong.

A Okay.

Q Put that to one side. If Davis makes the deal ultimately with Source B, other than the deal covered by Exhibit 15, I guess it is, do you have any expectation of being compensated?

MR. KILL: You are asking the witness to speculate. I don't know if he has given it any thought.

A No, I have not given it thought. I would review

my role in any particular transaction and see if I was worthy of compensation, I would ask for it.

Q Have you ever given any thought, or to your knowledge has anyone else in Cantor, Fitzgerald ever given any thought to the advisability of supplementing the April 25 letter attached to the D-Z 13(d) by either addition to that letter or by some textual statement in 13(d) itself with respect to the fact that you are and have in the past attempted to obtain financing for D-Z other than on a margin basis, and if such financing is consummated that you will be paid something?

MR. KILL: I object to the form of the question. I don't think it characterizes the witness' testimony accurately?

THE WITNESS: Could you reread that question, please?

(Record read.)

A No.

Q You have had no discussions with anyone, I take it, as to whether or not additional disclosures should be made in D-Z 13(d) as to your role with respect to obtaining additional financing of D-Z by other than the margin route?

A That is correct.

Q Other than sources, whatever you have testified to with respect to Source A, B, and C and D, have you introduced, and I am not implying that you introduced Davis to all of these people, but have you introduced Davis to anyone other than Sources, A, B, C, and D to obtain financing on a basis other than on a margin basis?

A No.

Q You introduced Mr. Davis, when I say you, I don't want to have to keep repeating, I mean Cantor, Fitzgerald, Cantor, Fitzgerald introduced Mr. Davis to the Sterling National Bank?

A Correct.

Q Did you personally arrange that?

A No.

Q Who arranged it?

A George Delson.

Q Do you know the basis on which the approach was made to the Sterling National Bank?

A Yes.

Q What was the basis?

A George Delson called the president of the Sterling National Bank, Jerry Toomy and said, "We have

a client who would like to arrange some financing on some stock. I'd like to come over and see you."

He said, "Fine."

Sometime very shortly thereafter, George Delson, Bruce Davis and I went over to see Mr. Toomy.

Q What was the discussion? Was it all about margin financing?

A No.

Q Was the discussion about financing other than margin financing?

A No, the discussion related principally around who was Bruce Davis, his company, his activities and a relatively small aspect of the discussion related around financing.

Q Was there any discussion about financing on any basis other than the margin basis?

A No.

Q Was all the discussion there was about margin financing?

A Security loan with stock, correct.

Q What was the upshot of this?

A The bank called back a day later and said that they would prefer to pass on this transaction.

Q How about National Bank of North America,

did you have anything to do with Davis approaching people for financing?

A Bruce Davis, and I went down to see the president of the National Bank of North America, who was not in. We saw a lower echelon officer and presented to him a financing proposal similar to that as I have described before and left with him certain documents.

Q By that, you mean margin type financing?

A Yes.

Q What was the upshot of that?

A They also decided that they did not want any loans related to REITS.

Q Putting aside the Columbian National Bank for a moment, did you seek to introduce or obtain financing for Mr. Davis from any other bank, other than Sterling National Bank, National Bank of North America and placing to one side Columbia National Bank?

A I called the local branch manager of Bankers Trust initially to test the waters whether banks were doing financing for REIT stock and discussed the matter with him.

Q What resulted from that discussion?

A Bankers Trust didn't want anything to do with REITs.

Q Did you mention margin financing to Bankers Trust?

A Yes.

Q Anyone other than Sterling, National Bank of North America and Bankers Trust, other than Columbia National?

A None that I recall.

Q Did you introduce Mr. Davis to Ladenburg, Thalmann?

A Yes.

Q Did you personally do that?

A No.

Q Who did it?

A Larry Orbe.

Q Did Ladenburg ultimately extent margin financing to Davis or D-Z?

A Yes.

Q Do you know what their limits were, if any?

A We have stopped purchasing stock and their limit is the 30,500 shares that they are now holding in a margin account.

Q Do you know whether any discussions ever took place between Davis and Ladenburg to finance them on any basis other than a margin basis?

A No.

Q Do you know whether any discussions ever took place between Ladenburg and Davis as to Ladenburg's obtaining financing, yet additional financing for favors?

A No.

Q You have no knowledge one way or the other?

A Yes, I have knowledge. There was no such communication.

Q Hayden Stone, did you introduce Mr. Davis to Hayden Stone?

A No.

Q You did not?

A No.

Q Do you know whether Mr. Davis in fact has obtained through someone else margin financing from Hayden Stone?

A Yes.

Q Do you know how he obtained such financing?

A Hayden Stone is a clearing agent for Schweickart & Company where arrangement was made.

Q Schweickart & Company --

A Clears its securities through Hayden, Stone. So I made arrangements with Schweickart & Company.

Q Do you clear through Schweickart & Company?

A No.

Q Do you have any relationship to Schweickart & Company?

A No.

Q Did you introduce Davis in any respect to Schweickart & Company?

A Yes.

May we go off the record?

(Discussion off the record.

Q You introduced Mr. Davis to Schweickart & Company?

A Yes.

Q For what purpose?

A For margin loans.

Q Did Schweickart & Company extend margin financing to Davis?

A Yes, they did.

Q In addition, Hayden, Stone itself started to extend margin financing to Davis?

A No, Hayden, Stone does all of the margin financing for Schweickart & Company. In other words, Schweickart doesn't maintain customer accounts. It is all done through a clearing arrangement.

Q That is one source, namely --

A It is a single source. Schweickart, Hayden, Stone is a single source.

Q We are clear on that. I am sorry I am obtuse about this but it took awhile to straighten it out.

How about Drexel, Burnham, do you know if Davis is obtaining any margin financial aid from Drexel, Burnham?

A Yes.

Q Itself?

A No.

Q Did you introduce Mr. Davis to Drexel, Burnham?

A No.

Q Do you know whether Mr. Davis independent of you ever discussed the possibility of obtaining margin financing from Drexel, Burnham?

A No.

Q Have you introduced Mr. Davis to anyone else other than the people you mentioned, people or institutions, other than the Columbian National Bank which we have off to one side?

A Not to my recollection.

Q Do you have all these names in mind? If you want, I will run them by again. I will give them to you in order.

A Surely, please do.

Q Other than Laddenburg, Schweickart, Hayden, Stone, which is one entity, Sterling National Bank, National Bank of North America, Bankers Trust, Financial Resources Corporation and Source D, did you introduce Mr. Davis to any other person, firm or corporation in the world in order for him to obtain any type of financing?

A I think you have left out CNA.

Q All right.

A There are none other to my recollection.

Q We have put Columbia National Bank off to one side and we will get to that in a moment.

At the present time, is your firm engaged in attempting to obtain financing on any basis for Mr. Davis or D-Z Investment Company?

A Except for Source D.

Q Yes.

A No.

Q Have you ever had any discussions with anyone as to whether or not there were any violations of any regulations of the Federal Reserve Board with respect

to financing other than Regulation T and by that, I mean Regulations U or Regulation X?

MR. KILL: Repeat the question.

(Record read.)

Q I am referring now to the relationship of NJB and Davis and D-Z. My question is limited to whether or not anything being done by Mr. Davis or on Mr. Davis' behalf, or D-Z or their behalf, with respect to NJB violating regulations G, U or X of the Federal Reserve Board?

A No.

Q Are you familiar with these regulations?

A I have recently become somewhat familiar with them.

Q How recently?

A The last several days.

Q Did you or your firm play any part in introducing Mr. Davis and D-Z Investment Company to the Columbia National Bank of Chicago?

A Yes.

Q Who was instrumental in making this introduction?

A Me.

Q When did you do this, sir?

A A few days before the documents you have in your hand are dated.

Q On what basis were discussions initiated between Mr. Davis and the Columbia National Bank of Chicago?

A I am not sure there were any discussions between the bank and Mr. Davis.

Q Did you handle all those discussions?

A Yes.

Q On what basis did you initiate discussions? Are you talking margin financing?

A Margin financing. I spoke to the principal officer at the bank and suggested to him that the bank take 25,000 shares of stock as collateral for a 62,500 loan to be extended to D-Z Investment Company to be guaranteed personally by Bruce Davis.

Q Mr. Davis signed the guarantee Exhibit 18 in your presence, correct?

A Correct.

Q Was that in your office?

A Yes, it was.

Q You procured the papers and he actually signed them in your office?

A Correct.

Q As far as you know, has there ever been any individual contact between Davis and the Columbia National Bank of Chicago?

A No.

Q I also show you documents for identification 19 and 20. Were these documents also signed by Mr. Davis at your office?

A Yes.

MR. KANTOR: Please mark for identification a letter dated June 18, 1974 from Mr. Davis to Burton L. Gordon, president, Columbia National Bank of Chicago.

I might add the copy I have of this letter is obviously a carbon and the letterhead of the corporation involved is not apparent although the letter is signed by Bruce R. Davis, president, I must confess I don't know what company he is sigting as president of.

Either D-Z or Security.

A D-Z.

(Document referred to was marked Defendant Trustee's Exhibit 34 for identification.)

Q Let me show you what has now been marked as Exhibit 34 for identification. Are you familiar

with this document?

A Yes.

Q Did you see it at or about the date it is dated?

A Yes.

Q Was this typed in your office?

A Yes.

Q It is your belief this was typed on D-Z's letterhead?

A Yes.

Q Can you testify with knowledge that D-Z in fact has its own letterhead?

A Bruce Davis reached into his briefcase, took out D-Z's stationery and this letter was typed on it.

Q You have an individual recollection of this?

A Yes.

Q Who wrote the letter, did Mr. Davis write it or did you write it?

A I dictated it in his presence.

Q What was your understanding as to the purpose of this letter?

A That Cantor, Fitzgerald would take 25,000 shares that it was presently holding in its margin account and deliver it to the Columbia National Bank in

Chicago versus a payment of $62,500?

Q You released 25,000 shares from your margin account?

A Right.

Q To the Columbia National Bank of Chicago, right?

A Correct.

Q Were you under-margined at any time between when you made this release and the time you were paid?

A No.

Q Did you look into that?

A Yes. We were never under-margined in this account and never until -- up to and including today.

Q As far as you were aware at the time and up to and including the present time were there any problems in your doing whatever you did as set forth in this letter?

A No.

Q It raised no problems as far as you were concerned?

A Correct.

MR. KANTOR: I will ask to have marked for identification as the next exhibit, I guess it must be a customer's agreement.

(Document referred to was marked Defendant Trustee's Exhibit 35 for identification.)

MR. KANTOR: This document is not dated.

MR. KILL: We will see if we can provide you with a better copy.

Q Have you ever seen Exhibit 35 for identification before? It is a two-page document, the front and the back?

A Yes, I have.

Q Do you know on or about what date Mr. Davis signed this document?

A No.

Q Do you know whether it was in April or May?

A I don't know.

Q Do you know at what point you opened the account with D-Z Investment Company?

A Yes.

Q When?

A At or around the time of its formation.

Q Do you know when that was?

A I don't recall.

Q Were initial purchases made in the name of Security Management?

A Yes, it was.

Q And therefore, these securities were transferred to the account of D-Z?

A That is correct.

Q When the account was opened?

A That is correct.

Q And these initial purchases by Security were made on a margin basis, on the same basis on which --

A Correct.

MR. KANTOR: If you can give us a better copy, fine.

MR. KILL: We will try.

Q When was the last purchase of NJB stock made by D-Z or Davis?

A A couple of days ago.

Q Do you know whether subsequent to Friday afternoon any purchases were made on behalf of Mr. Davis or any person, firm or entity related to D-Z?

A Yes, I do know that no purchases were made.

Q That is up to and including the present moment?

A That is correct.

Q To your knowledge, when if ever did Mr.

Davis form the intention to acquire control of NJB?

A Three or four days before our meeting at Skadden, Arps.

Q Unfortunately, I don't have that date in mind.

A I only recall it by reference. I don't recall the date either.

Q How did you learn of this intention?

A He told me.

Q What did he say to you, sir?

A "NJB is the company that I want to acquire."

Q Did he use the word "control"?

A Yes.

Q Did he say "The company of which I want to acquire control"?

A Yes, he said he wanted to make a substantial investment in it. If he was going to make a large investment in the company, he also wanted to control it.

Q From this time, three or four days prior to the meeting at Skadden, Arps up to and including the present time, have you become aware of any change of intention by Mr. Davis with respect to NJB?

A No, I am not aware of any change of intention.

Q As far as you know, he has got the same

intention up and including the present time?

A That is correct.

Q Have you read the various 13(d) filings, by that I mean the amendments to the 13(d) made by D-Z up to and including the present time?

A I have read two such amendments.

Q Before I pursue that any further, I am looking for an additional document.

I want to go off on a side issue for one moment. I want to put Exhibit 15 back in front of you and ask you as to whether or not you are aware of the reason why the deal or the proposed deal between Financial Resources Corporation and D-Z, which is the subject of this Exhibit 15, why that aborted?

A On advice of counsel --

Q Do you know what counsel and what advice --

A Yes.

Q Was it your counsel?

A [illegible]

Q Was it also D-Z's counsel?

A Yes.

Q One firm serving as both your counsel?

MR. KILL: Was serving.

Q Was serving up to a certain point.

A Yes.

Q At the time they rendered this advice, they were your counsel too, correct?

A That is correct.

Q You are sure of that?

A Yes.

Q On advice of counsel, this proposed deal of Financial Resources Corporation aborted?

A Correct.

Q Did you ever have any discussions with Mr. Davis as to the reason why this transaction with Financial Resources Corporation aborted, which discussions took place outside of the presence of counsel?

A No.

Q All your discussions with Mr. Davis were in the presence of counsel. Did you have any discussion with anyone else in the world other than counsel which discussions took place outside the presence of counsel as to the reasons why the proposed transaction with Financial Resources Corporation, which is the subject of Exhibit 15, aborted?

A Yes.

Q With whom did you have such discussions?

Excerpts from Deposition of William P. Miller

A Other employees of Cantor, Fitzgerald.

Q Who are these employees?

A Larry Orbe and Paul Labb.

MR. KANTOR: Do you contend those are privileged? I don't think they are.

MR. KILL: Why don't you ask the question. If I am going to assert the privilege, I will.

Q What were you told by Mr. Orbe and Paul Labb? What were you told?

A I wasn't told anything. I just discussed the problem with them.

Q What did you discuss, what kind of problem?

A The advice of counsel.

* * *

Q Your testimony is you had no discussions with Mr. Orbe and Mr. Labb independent of a discussion of the advice you were given by your attorneys?

A That is correct, the context of our discussions were with respect to the advice of counsel.

MR. KANTOR: I want to mark as the next exhibit Amendment No. 5 to the 13(d)'s of D-Z with respect to NJB.

(Document referred to was marked Defendant Trustee's Exhibit 36 for identification.)

Q I want to put before you all these documents, sir. They are basically the initial 13(d) filing of D-Z with respect to NJB and the documents which amend that, Amendments 1, 2, 3, 4 and 5.

For the record, we are putting before the witness is what has been marked, I am giving it to you in the order in which they occurred in the ordinary course of business; Exhibit 7 which is the original 13(d); Exhibit 2 which Amendment No. 1; Exhibit 6 which is Amendment No. 2; Exhibit 9 which is Amendment No. 3;

Exhibit 17 which is Amendment No. 4 and Exhibit 26 which is Amendment No. 5.

You have all that material in front of you.

I want to know which of these documents, if any, you saw prior to my putting them in front of you.

A My best recollection is prior to your putting these documents in front of me, I have looked at the 13(d) schedule and Amendments No. 2 and Amendment No. 3.

Q In other words, the original 13(d) and Amendments 2 and 3?

A Yes.

Q Did those come out of your file? Did you have those in your file, sir?

A Yes.

Q To your knowledge, did you have Amendments 1, 4 and 5 in your file?

A No.

Q Your testimony is you have never seen these documents before my putting them in front of you?

A That is right.

Q The original 13(d) and Amendments 2 and 3, at the time you read them, did you do anything to ascertain whether or not they were accurate?

A No.

Q Did you call Mr. Davis and probe with him whether or not these documents, namely, original 13(d) and amendments 2 and 3 candidly disclosed in a complete fashion all that was required to be disclosed under 13(d)?

A No.

MR. KILL: Objection to the form of the question. You have your answer.

Q Did you do anything, sir, to obtain Amendments 1, 4 and 5?

Amendment 5 I will grant you has been filed very recently, within the last few days.

A Excuse me, could you reread the question?

(Record read.)

Q Did you do anything to obtain copies of Amendments 1, 4 and 5 prior to my putting them in front of you?

A Yes.

Q You knew you had Amendments 2 and 3, correct, therefore, you knew you did not have Amendment 1, am I accurrate on that?

A That is correct.

Q Did you call anyone or contact anyone to get a copy?

A No.

Q Why not?

A My first thought was that there was no such filing as Amendment No. 1; that Amendment No. 2 was really the second filing.

Q In effect, you are saying that there was --

A I thought my file was complete, having the first filing and Amendment No. 2, 3.

Q And after getting Amendment No. 3, did you put that standing order with anyone, so to speak, that you be sent all additional copies, I mean copies of any additional amendments?

A Yes, I have recently made such a request.

Q Was that made to counsel?

A To D-Z's counsel, and asked him to send me copies as an accommodation.

Q Prior to that, did you have any understanding or arrangement with anybody that you would get copies of the 13(d) filings?

A Casual arrangements. That is apparently why he sent me Amendments No. 2 and 3.

Q With whom did you have such arrangements, with Davis?

A No, Mr. Russell of the firm of Rubin, Wachtel.

Q As you sit here today, could you affirm under oath the 13(d) and all the amendments thereto, if you want to take the time to read them, are true and correct to the best of your knowledge?

MR. KILL: I object to the form of the question. Do you want him to read the amendments or not?

Q Was the 13(d) and Amendments 2 and 3 to the extent you looked at them true and correct to the best of your knowledge?

A To the extent that I looked at them, which I testified before that I glanced at them, the answer is yes.

* * *

Excerpts from Deposition of William P. Miller

Q Did you ever review the original 13(d) or the amendments you had, namely two or three with a view towards ascertaining whether or not these documents complied with the applicable regulations?

A No.

Q Did there come a time when Mr. Davis commenced to buy stock of NJB through your company on the basis other than on a margin basis?

A Yes.

Q When did that take place, sir?

A Recently.

Q Do you know from whence the financing for these cash transactions is coming?

A No.

Q Did you ever inquire?

A No.

Q When D-Z switched to a cash basis, did you seek to ascertain whether or not they had sufficient funds to buy on a cash basis?

A No.

Q Did you ask for an updated financial statement of D-Z?

A No.

Q Have you ever asked for a financial statement of D-Z?

A No.

Q Are you aware of the so-called know-your-customer rule?

A Yes.

Q Did you give any consideration under the know-your-customer rule it was necessary for Cantor, Fitzgerald to have financial information with respect to D-Z?

A Could you repeat the question?

(Record read.)

A Yes, I did give consideration.

Q What was your determination?

A That I must have known my customer.

Q This is notwithstanding the fact that you testified earlier that you appreciated the fact that D-Z was a shell corporation?

A That is correct.

Q Is it your understanding that Mr. Davis has personally guaranteed D-Z Corporate account with Cantor, Fitzgerald?

A Could you define what you mean by guarantee?

Q That in some way -- I will define it this way, sir. Do you have any understanding one way or the other as to whether or not Mr. Bruce R. Davis has personally obligated himself in a legal enforceable way to make good on purchases made by D-Z in the name of NJB stock through you?

MR. KILL: That calls for a legal conclusion. Legally enforcible way. I think this witness is incompetent to testify.

MR. KANTOR: He is a lawyer.

MR. KILL: Only a court can make that judgment.

Q To your knowledge, does there exist any document or instrument signed by Mr. Davis that he will guarantee the D-Z account?

A No.

Q You know what a guarantee is, don't you?

A Yes.

Q No such document exists?

A No.

Q Other than a written instrument, are you aware of any undertaking such as an oral undertaking or an informal undertaking that Mr. Davis will stand

good for D-Z's purchases?

A Yes.

Q Is there such an undertaking?

A Verbal assurances.

Q When were these verbal assurances given?

A At the beginning of our transactions with Mr. Davis.

Q You are talking way back in April, correct?

A Yes.

Q At that time, you were financing on a margin basis, correct?

A That is correct.

Q When you began to buy on a cash basis, did you ask for further assurances?

A No, I don't distinguish the two.

Q Have you made any inquiry of Mr. Davis where he is getting the money to make these cash purchases?

A No.

Q None, whatsoever?

A None, whatsoever.

Q As you are sitting here today, you don't know where the money is coming from?

A No.

Q Do you know whether he is borrowing the money?

A I don't know.

Q Do you know whether he is borrowing the money on a secured basis?

A I don't know.

Q Do you know whether anyone else who may be supplying him with money is borrowing the money?

A I don't know.

Q Do you know whether anyone who may be supplying the money may be iborrowing money on a secured basis?

A I have no knowledge.

Q Have you given any consideration to whether or not you are under any duty to make inquiry in this area?

A Yes.

Q What consideration have you given to the subject?

A I have thought about it.

Q Did you discuss it with anybody?

A No.

Q What was your thinking?

A That he would pay for the stock.

Q And that it was not necessary for you to ascertain whether or not he was borrowing the money or anyone was supplying him with money was borrowing the money, is that correct?

A I made that determination before I started purchasing any stock for him, whether on a margin account or a cash account.

Q As far as you were concerned, you were not interested in how Davis was raising this money other than as it involved you, is that correct?

A That is correct.

Q Did Mr. Davis ever advise you of his plans for NJB should he be successful in acquiring control of NJB?

A Generally.

Q When did he first advise you of those plans, sir?

A He advised me of the plan before the beginning of the acquisition of any shares.

Q What was your understanding of that plan?

A The plan was not only with respect to NJB, but with any company that was selected, that there were many alternatives open to him such as eliminating the advice, breaking the trust, merging it into his own

company and keeping it at status quo.

Q Did he ever narrow down his plans to any one or limited number of alternatives as opposed to all the ones you mentioned?

A No.

Q As you sit here today, do you know whether or not Mr. Davis has any specific plans with respect to any specific properties in the portfolio of AJB?

A I have no such knowledge.

Q One way or the other?

A One way or the other.

* * *

Q As you sit here today, are you aware of any plans of D-Z Investment Company, Mr. Davis, with respect to future financing of the purchase of NJB shares?

A Yes.

Q What are you aware of, sir?

A Discussions that he is having with Source D.

Q Other than any discussions which might be on the fire with Source D, are you aware of any other plans or discussions that are impending at the moment?

A No, I don't recall any.

Q Have you communicated to Mr. Davis in the last week or so up to and including the present time, any plans or ideas or thoughts of yours with respect to how he could go about financing his purchase of NJB shares and the obtaining of control of NJB?

A No.

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